

FILED
U.S. DISTRICT COURT

2006 SEP -6 A 10: 21

In the United States District Court DISTRICT OF UTAH
for the District of Utah, Central Division
DEPUTY CLERK

RICHARD A. BROWN,

Plaintiff,

vs.

JO ANNE B. BARNHART, Commissioner of
Social Security,

Defendant.

ORDER

Case No. 1:02 CV 88 JTG

Plaintiff Richard A. Brown brought this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of the Commissioner of Social Security's decision denying his application for disability benefits. The Court referred the matter to Magistrate Judge Nuffer, who issued a Report and Recommendation in which he recommended that the case be remanded to the Administrative Law Judge (ALJ) for articulation of certain findings and further analysis. The Commissioner filed a timely Objection in support of her determination to uphold the ALJ's decision.

The Court in de novo review affirms the ALJ's decision in part, but remands the case to the ALJ for findings and more analysis as to plaintiff's episodes of decompensation. All other parts of the Magistrate Judge's Report and Recommendation that are not objected to are affirmed.

FACTUAL BACKGROUND

The Report and Recommendation provides a thorough and accurate statement of facts in this case. The Commissioner's Objections focus on the Magistrate Judge's analysis of steps three and four in the sequential analysis of disabilities. Because the Commissioner's Objections are directed at specific findings or recommendations, the Court is required to make de novo determinations concerning those matters. 28 U.S.C. § 636 (2005). The Commissioner's Objections relate only to the Magistrate Judge's analysis of steps three and four, so this Court will review those objections de novo.

REVIEW OF STEP THREE ANALYSIS

The Tenth Circuit has described the step three analysis as follows:

At step three, the ALJ determines whether the claimant's impairment 'is equivalent to one of a number of listed impairments that the Secretary acknowledges as so severe as to preclude substantial gainful activity.'

Clifton v. Chater, 79 F.3d 1007, 1009 (10th Cir. 1996)(citing *Williams v. Bowen*, 844 F.2d 748, 751 (10th Cir. 1988)). In *Clifton*, the Tenth Circuit rejected the bare determination by the ALJ, stating that the ALJ "did not discuss the evidence or his reasons for determining that appellant was not disabled at step three, or even identify the relevant Listing or Listings." *Id.* at 1009. In spite of such an obvious deficiency in the analysis of step three, the Tenth Circuit has recognized that an ALJ's failure to make specific findings at step three may be harmless error, if the "ALJ's findings at other steps of the sequential process . . . provide a proper basis for upholding a step three conclusion that a claimant's impairments do not meet or equal any listed impairment." *Fischer-Ross v. Barnhart*, 431 F.3d. 729, 732-33 (10th Cir. 2005).

In the case at bar, the ALJ stated with reference to step three:

[S]ubpart "B" requires two criteria be marked restrictions or difficulties, and the medical record, and the Administrative Law Judge's *impression* of the claimant's mental impairment derived from claimant's appearance at the hearing is that the claimant *only has one marked limitation*, that being his inability to maintain concentration, persistence or pace. The other restrictions are only *mild to moderate*. (Emphasis added).

(R. 16). In the above statement the ALJ is referring to the functional areas that the ALJ is required to rate: activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. 20 C.F.R. § 416.920a(c)(4). All of these functional areas are rated on a five-point scale (none, mild, moderate, marked or extreme), except episodes of decompensation which is rated on a four-point scale (none, one or two, three, or four or more).

Id.

The magistrate judge, in his analysis of the ALJ's statement, states that the ALJ only relied on his impression of the claimant at the hearing; that the ALJ did not articulate his reasons for concluding that plaintiff has only "mild to moderate" limitation in activities of daily living and social functioning; and that the ALJ did not rate the episodes of decompensation correctly.

In reviewing the government's objections de novo, the Court finds that the magistrate judge erred in his rejection of the ALJ's analysis of step three. In this regard, the Court finds that the ALJ's faulty analysis of step three is cured because step three is adequately discussed by the ALJ in other parts of his overall analysis.

ALJ's Impression of Plaintiff

It is manifest from a review of the record that the ALJ properly considered his "impression" of the plaintiff at the hearing, and that his impression was supported by the "medical record." It is clear to the Court that ALJ did not solely rely on the testimony presented

at the hearing, but combined his review of the medical record with his impression of the plaintiff throughout his decision. The ALJ specifically references opinions and evidence presented in the medical record to support his decision regarding the plaintiff's limitations in the areas of social functioning and activities of daily living.

Activities of Daily Living

The Court's de novo review of the ALJ's discussion in other parts of his decision reveals that he properly rated plaintiff's limitation in activities of daily living. Although the ALJ does not thoroughly discuss his reasoning at step three in his decision, his conclusion that plaintiff's functioning in those areas is "mild to moderately" limited, is supported by substantial evidence, including the medical record, which the ALJ discussed in some depth throughout the entire decision. As noted in the ALJ's Findings, activities of daily living include "adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for your grooming and hygiene, using telephones and directories, and using a post office." 20 C.F.R. pt. 404, subpt. P, app. 1, § 12.00 C. 1. In applying the regulations to his perception of plaintiff's activities, the ALJ stated that "claimant reported that he managed all of his own activities of daily living without assistance, including apartment cleaning, cooking, grocery shopping and his laundry. He also managed his own funds without difficulty." (R. 15). In addition, the ALJ found that plaintiff was able to appear in a timely manner for appointments and was able to appropriately respond to questions asked of him and to remain on task during examinations. (R. 17). The Court finds that a review of the record supports the ALJ's finding that plaintiff's functioning in the area of activities of daily living is "mild to moderately limited."

Social Functioning

The regulations state that social functioning “refers to your capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals.” 20 C.F.R. pt. 404, subpt. P, app. 1, § 12.00 C. 2. “Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers.” *Id.* The ALJ found that although plaintiff has had issues concerning getting angry or frustrated with people, such as his mom or supervisor, medication has helped him to calm down and that he is better able to function when taking his prescription medications. (R. at 17). The ALJ did note that plaintiff spends most of his time in his room or riding his bicycle and has no peer group to which he interacts. (R. 15). Plaintiff testified that he visits his mother and brother occasionally, and once a month he has a home teacher that comes to visit. (R. 50-51). Also, plaintiff is able to ride the bus to get to appointments, and that is how he arrived at the ALJ hearing. (R. 33).

From the record it is clear that the ALJ considered all of the above in rendering his finding that plaintiff has “mild to moderate” limitations in the area of social functioning. The ALJ found that although plaintiff has limited social contacts he maintains relationships with his family, is able to function in society by communicating with bus drivers and doctors, and is able to do semi-social things like grocery shopping and going to the library.

This Court finds *de novo* that the evidence contained in the record as a whole supports the ALJ’s findings that plaintiff has “mild to moderate” limitations in the area of social functioning.

The Court finds that the ALJ’s analysis of plaintiff’s limitations in the areas of

activities of daily living and social functioning are supported by substantial evidence. Accordingly, this Court affirms those parts of the ALJ's decision, and respectfully rejects the determination in the Report and Recommendation as to the aforesaid functional areas.

REVIEW OF STEP FOUR ANALYSIS

At step four, the magistrate judge found that the ALJ erred because he made contradictory statements at steps three and four. At step three the ALJ found that plaintiff had *marked* limitation in his ability to maintain concentration, persistence, or pace. Then, at step four, the ALJ found that plaintiff retains *mild to moderate* residual mental functional capacity. Due to these apparently contradictory findings the magistrate judge recommended that the decision be remanded back to the ALJ to correct the inconsistency.

In the government's objection to the magistrate judge's Report and Recommendation, it is stated that the ALJ's assessments at steps three and four are not necessarily inconsistent, but they need only to be distinguished. This is so because step three assesses the severity of a mental impairment, while step four assesses the mental residual functional capacity. On de novo review, it appears to the Court that the statements are not contradictory.

In the step four analysis, the ALJ must complete the following three phases:

In the *first phase*, the ALJ must evaluate a claimant's physical and mental residual functional capacity (RFC), and in the *second phase*, he must determine the physical and mental demands of the claimant's past relevant work. In the *final phase*, the ALJ determines whether the claimant has the ability to meet the job demands found in phase two despite the mental and/or physical limitations found in phase one. At each of these phases, the ALJ must make specific findings.

Williams v. Barnhart, 2006 WL 1109765, at *5 (10th Cir. 2006)(citing *Doyal v. Barnhart*, 331

F.3d 758, 760 (10th Cir. 2003)).

Residual functional capacity assessment is defined in the regulations as plaintiff's "impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what [plaintiff] can do in a work setting." 20 C.F.R. § 416.945. The residual functional capacity "is the most [plaintiff] can still do despite [his/her] limitations." *Id.*

The claimed error in the ALJ's reasoning has to do with the first phase of the analysis. At this phase the ALJ found that the plaintiff retains *mild to moderate* mental functional capacity limitations which were listed as:

(1) the ability to carry out detailed instructions, (2) the ability to maintain attention and concentration for extended periods, (3) and the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, (4) and the ability to interact appropriately with the general public . . . (5) the ability to set realistic goals or make plans independently of others.

(R. at 17). At step three of the analysis the ALJ stated that plaintiff had a *marked* limitation, i.e. "his inability to maintain concentration, persistence or pace." (R. at 16).

The government argues that the difference in the ratings nevertheless is correct because step three rates the severity of the mental impairment and step four rates the impairment based on its effect on performance at work. Also, the ALJ supports his opinion that plaintiff's mental residual functional capacity limitations are mild to moderate by stating that:

[C]laimant was capable of focusing on a given problem. He could remain on task, and his responses were appropriate to the question asked him. He could copy a complex diagram, complete three of a three step command, and follow one and two step instructions, although with difficulty. He usually would require the instructions to be repeated twice for him to comprehend what was expected of him.

(R. at 17).

On de novo review, it is apparent to the Court that the ALJ correctly evaluated plaintiff's RFC. The evaluation used at steps two and three of the sequential process are "not an RFC assessment but are used to rate the severity of mental impairments." Social Security Ruling 96-8p (1996). "The mental RFC assessment used at steps 4 and 5 of the sequential evaluation process requires a more detailed assessment" to determine what an individual can do at work despite his or her limitations. *Id.*

In the case at bar, it is clear that the ALJ followed the proper process in his determination to find that plaintiff had a marked limitation in concentration, persistence or pace at step three. Also, in applying the more detailed RFC analysis to plaintiff in step four, the ALJ properly found that plaintiff is only mild to moderately limited in a working environment. The magistrate judge's recommendation was in error in his finding that the ALJ's different ratings of step three and step four were contradictory. Accordingly, concerning step four, the Court affirms the ALJ's determination.

EPISODES OF DECOMPENSATION

The magistrate judge was correct in finding that the ALJ erred in incorrectly determining the episodes of decompensation from which the plaintiff suffered. The regulations state:

Episodes of decompensation are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, *maintaining social relationships, or maintaining concentration, persistence, or pace.*

* * * *

Episodes of decompensation may be inferred from medical records

showing significant alteration in medication; or documentation of the need for a more structured psychological support system; or other relevant information in the record about the existence, severity, and duration of the episode.

20 C.F.R. pt. 404, subpt. P, app. 1, § 12.00 C. 4.

The regulations also state that episodes of decompensation should be rated on a four-point scale: none, one or two, three, four or more. 20 C.F.R. § 416.920a(c)(4).

In the case at bar, the ALJ did not rate plaintiff's episodes of decompensation according to the stated four-point scale. Rather, he rated that limitation as "mild to moderate." This error would be considered harmless error if other parts of the ALJ's discussion provided proper support for this rating. In this regard, however, the ALJ discusses only two episodes of decompensation, i.e. when plaintiff got very angry with his mother and yelled at her (but had never hit her), and a reported yelling episode where he got angry at a job site and walked off the job after becoming frustrated with some things. (R. 17).

Although the ALJ does discuss these two episodes, it is unclear from his decision how frequent these episodes were and if there were more occurrences that should have been considered to constitute episodes of decompensation.

A psychological report by Dr. Swaner discusses episodes of decompensation complained of by plaintiff by stating "he reports that he sleeps for extended periods of time, he misses appointments and assignments." (R. at 148). These episodes of decompensation presented in the medical record, and others which may exist, should be considered and cited by the ALJ in determining plaintiff's correct rating in this area.

The Court agrees with the magistrate judge's recommendation to remand this part of the ALJ's decision back to the ALJ. The ALJ should determine the appropriate rating of

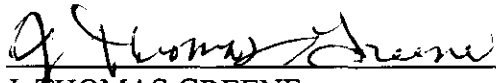
plaintiff's episodes of decompensation, and in doing so should determine and make findings about the frequency of such episodes and set forth a factual basis for his determinations.

Based upon the foregoing, it is hereby

ORDERED, that the ALJ's decision is REVERSED and REMANDED for the sole purpose of determining the proper rating and further analysis and findings concerning episodes of decompensation; it is

FURTHER ORDERED, that all other parts of the ALJ's decision denying plaintiff's claims for Disability Insurance Benefits and Supplemental Security Income are AFFIRMED.

DATED this 5th day of September, 2006.



J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

Northern

District of

Utah

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

Tywone Davis

Case Number: DUTX 1:05CR000153-001

USM Number: 13484-081

Kristen Angelos

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) Two of the Superseding Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 922(g)(1)	Possession of a Firearm by a Convicted Felon		2s

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 1 of the Superseding Indictment ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/30/2006

Date of Imposition of Judgment

Tena Campbell

Signature of Judge

Tena Campbell

Name of Judge

U.S. District Court Judge

Title of Judge

8-31-2006

Date

DEFENDANT: Tywone Davis
CASE NUMBER: DUTX 1:05CR000153-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

37 Months to run concurrent with previously imposed Utah state sentences in cases 051902817 and 051905447.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends to the BOP that the defendant serve his sentence at FCI Victorville, CA.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Tywone Davis
CASE NUMBER: DUTX 1:05CR000153-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Tywone Davis
CASE NUMBER: DUTX 1:05CR000153-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one time \$115 fee to partially defray the costs of collection and testing.
2. The defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the probation office.
3. The defendant shall participate in a mental health treatment program under a copayment plan as directed by the probation office and take any mental health medications as prescribed.
4. The defendant shall submit his person, residence, office or vehicle to a search, conducted by a USPO at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Tywone Davis
CASE NUMBER: DUTX 1:05CR000153-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

--	--	--	--

--	--	--	--

--	--	--	--

--	--	--	--

--	--	--	--

--	--	--	--

TOTALS	\$ 0.00	\$ 0.00	
--------	---------	---------	--

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Tywone Davis
CASE NUMBER: DUTX 1:05CR000153-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
Taurus .38 Special Revolver, Serial #SK88826 (See Attached Judgment of Forfeiture Order)

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

AUG 30 2006

MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Case #: 1:05CR00153
	:	
vs.	:	JUDGMENT OF FORFEITURE
	:	
TYWONE DAVIS,	:	
	:	JUDGE Tena Campbell
Defendant.	:	
	:	

IT IS HEREBY ORDERED that:

1. As a result of a plea of guilty to Count 2 of the Superseding Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 924(d)(1), the defendant Tywone Davis shall forfeit to the United States all property, real or personal, that is derived from, used, or intended to be used in violation of 18 U.S.C. § 922(g)(1), including but not limited to:

- Taurus .38 Special Revolver, Serial # SK88826

2. The Court has determined that based on a guilty plea of Possession of a Firearm by a Convicted Felon, that the above-named property is subject to forfeiture, that the defendant had an interest in the property, and that the government has established the requisite nexus between such property and such offense.

IT IS FURTHER ORDERED:

3. Pursuant to Fed. R. Crim. P. 32.2(b)(3), the Preliminary Order of Forfeiture is made final as to the defendant and the Judgment of Forfeiture shall be made part of the sentence and included in the judgment.

4. Any petition filed by a third party asserting an interest in the subject property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.

5. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

6. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. § 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

7. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Dated this 30 day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Tena Campbell", is written over a horizontal line.

TENA CAMPBELL, Judge
United States District Court

UNITED STATES DISTRICT COURT

Northern

District of

Utah

UNITED STATES OF AMERICA

V.

Rodney Eugene Galgiani

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 1:05CR000156-004

USM Number: 27507-077; 13135-081

Rebecca C. Hyde

Defendant's Attorney

FILED
U.S. DISTRICT COURT

2006 SEP -5 P 3: 54

DISTRICT OF UTAH

DEPUTY CLERK

THE DEFENDANT:

☒ pleaded guilty to count(s) 3 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 USC § 841(a)(1)	Possession of Marijuana With Intent to Distribute		3

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 1 and 2 of the Indictment ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/31/2006

Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell

Name of Judge

U.S. District Court Judge

Title of Judge

9-1-2006

Date

DEFENDANT: Rodney Eugene Galgiani
CASE NUMBER: DUTX 1:05CR000156-004

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

TIME SERVED

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Rodney Eugene Galgiani
CASE NUMBER: DUTX 1:05CR000156-004

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Rodney Eugene Galgiani
CASE NUMBER: DUTX 1:05CR000156-004

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall reside at the CCC for a period of 30 days, upon release from incarceration. The defendant shall have work release, or other release as approved by the USPO.
2. The defendant shall provide the probation officer access to all requested financial information.
3. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan, as directed by the USPO.
4. The defendant shall submit his person, residence, office or vehicle to a search, conducted by a USPO at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Rodney Eugene Galgiani
CASE NUMBER: DUTX 1:05CR000156-004

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
--------	----------------	----------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Rodney Eugene Galgiani
CASE NUMBER: DUTX 1:05CR000156-004

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

The Honorable David Sam
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

TIGHTWAD MAGAZINE, Inc., et al.,

Plaintiffs,

v.

CACHE COUNTY,

Defendant.

ORDER GRANTING DEFENDANT'S
MOTION TO AMEND ANSWER TO
SECOND AMENDED COMPLAINT

Civil No. 1:05 cv 20 TC

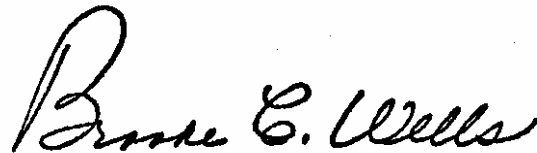
Judge Tena Campbell

Magistrate Judge Brooke C. Wells

Defendant, Cache County, seeks leave to amend their Answer to Plaintiffs' Second Amended Complaint.¹ Specifically, Defendant seeks to add the defenses of *Res Judicata* and collateral estoppel.² Plaintiffs' objection-that Defendant failed to provide a copy of the proposed amended answer for Plaintiffs to review-was untimely and lacks merit because the court finds that Defendant adequately articulated what the amended answer would be in their pleadings.

Accordingly, for good cause shown, the court GRANTS Defendant's Motion to Amend Answer.

DATED this 6th day of September, 2006.



Brooke C. Wells
United States Magistrate Judge

¹ Docket no. 67.

² See Mem. in Supp. p. 2.

UNITED STATES DISTRICT COURT

Northern

District of

Utah

FILED
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

V.

Mario Salas-Gonzalez

JUDGMENT IN A CRIMINAL CASE

SEP -5 P 12:34

Case Number: DUTX106CR000001-001

USM Number: 13211-081

DISTRICT CLERK

DEPUTY CLERK

James Garrett

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment.

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 U.S.C. §1326	Re-entry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/31/2006

Date of Imposition of Judgment

Signature of Judge

Dale A. Kimball

U.S. District Judge

Name of Judge

Title of Judge

Date

September 5, 2006

DEFENDANT: Mario Salas-Gonzalez
CASE NUMBER: DUTX106CR000001-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

30 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be incarcerated at FCI Phoenix, Arizona to facilitate family visitation.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Mario Salas-Gonzalez
CASE NUMBER: DUTX106CR000001-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Mario Salas-Gonzalez

CASE NUMBER: DUTX106CR000001-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally re-enter the USA. If the defendant returns to the USA during the period of supervision, he is instructed to contact the U. S. Probation Office in the District of Utah within 72 hours of arrival in the USA .

CRIMINAL MONETARY PENALTIES

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

- | Name of Payee | Total Loss* | Restitution Ordered | Priority or Percentage |
|---------------|-------------|---------------------|------------------------|
|---------------|-------------|---------------------|------------------------|

- * Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Mario Salas-Gonzalez
CASE NUMBER: DUTX106CR000001-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

Northern Division

District of

2006 SEP -5 P 2:31
Utah

UNITED STATES OF AMERICA

V.

Jose Moreno-Hernandez

JUDGMENT IN A CRIMINAL CASE OF UTAH

Case Number: DUTX106CR000032-001

USM Number: 23575-081

Carlos Garcia, FPD

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 USC Sec 1326	Re-Entry of Deported Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/28/2006

Date of Imposition of Judgment

Signature of Judge

J. Thomas Greene U.S. District Judge
Name of Judge Title of Judge

Date

Sept 5, 2006

DEFENDANT: Jose Moreno-Hernandez
CASE NUMBER: DUTX106CR000032-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

27 months, with credit for time served since 04/04/2006.

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends defendant be placed in a facility in San Pedro or Lompoc, California. The court further recommends defendant participate in an alcohol/drug treatment program while incarcerated.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jose Moreno-Hernandez
CASE NUMBER: DUTX106CR000032-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Jose Moreno-Hernandez
CASE NUMBER: DUTX106CR000032-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not re-enter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the USPO in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: Jose Moreno-Hernandez
CASE NUMBER: DUTX106CR000032-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$ 0.00	\$ 0.00
--------	---------	---------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Jose Moreno-Hernandez
CASE NUMBER: DUTX106CR000032-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Special Assessment Fee of \$100 is due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

CALLISTER NEBEKER & McCULLOUGH
MARK L. CALLISTER (6709)
MICHAEL D. STANGER (10406)
Zions Bank Building, Suite 900
10 East South Temple
Salt Lake City, UT 84133
Telephone: (801) 530-7300
Facsimile: (801) 364-9127

Attorneys for Plaintiff, Counterclaim and Third Party
Defendants

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

TRACE MINERALS RESEARCH, L.C., a
Utah Limited Liability Company,

Plaintiff,

vs.

MINERALS RESOURCES
INTERNATIONAL, INC., a Utah corporation;
BRUCE ANDERSON, an individual; and
JOHN DOES I through X,

Defendants.

MINERAL RESOURCES INTERNATIONAL,
INC.,

Counterclaim Plaintiff,

vs.

TRACE MINERALS RESEARCH, L.C.;
ELEMENTS OF NATURE, INC.; MATT
KILTS; CRAIG MILES, SCOTT PERKES;
JAMES CRAWFORD; and JOHN DOES I
through X,

Counterclaim and Third Party
Defendants.

FILED
DISTRICT COURT
RECEIVED
2006 SEP -1 A 11:12
DISTRICT OF UTAH
AUG 31 2006
OFFICE OF DEPUTY CLERK
JUDGE TENA CAMPBELL

ORDER TO EXTEND DEADLINE

Civil No. 1:06CV00068


Judge Tena Campbell

Based upon the Stipulation and Motion for Extension of Time,

IT IS HEREBY ORDERED that the Stipulated Motion extending the deadline for responding to the Counterclaim and Third Party Complaint until and through September 19, 2006.

DATED this 31 day of August, 2006.

BY THE COURT:


TENA CAMPBELL
U.S. DISTRICT COURT JUDGE

APPROVED AS TO FORM:

BEARNSON & PECK, L.C.

/s/ Shaun L. Peck
SHAUN L. PECK
*(Signed by Filing Attorney with permission
of Shaun L. Peck per email dated 08/29/06)*

FILED
U.S. DISTRICT COURT
2006 SEP -5 P 1:38

DISTRICT OF UTAH

BY:
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
NORTHERN DIVISION

JIMMY ROBERTS,	:	Civil No.1:06 CV 0075 DB
Plaintiff,	:	
vs.	:	ORDER GRANTING FEDERAL
	:	DEFENDANTS 60 DAYS TO
	:	RESPOND TO PLAINTIFF'S
JOHN SNOW, SECRETARY,	:	COMPLAINT
DEPARTMENT OF THE TREASURY,	:	
et. al.,	:	Honorable Dee Benson
Defendants.	:	

Based upon Defendants' Motion for Order Granting Federal Defendants 60 Days to Respond to Plaintiff's Complaint, and good cause appearing therefore,

IT IS HEREBY ORDERED that defendants John Snow, Secretary of the Department of the Treasury, Becky Miles and Robyn Jackson have 60 days from the date that they are properly served to answer or otherwise respond to plaintiff's complaint.

DATED this 5th day of September, 2006.

BY THE COURT:



Honorable Dee Benson
United States District Judge

RECEIVED CLERK

SEP 01 2006

FILED
U.S. DISTRICT COURT

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

Real Property located at [Redacted] West 1200
North, Farr West, Utah,

\$18,305.00 in U.S. Currency,

Defendants.

DEPUTY CLERK

Case: 1:06 CV 101

ORDER FOR PUBLIC NOTICE OF

CIVIL JUDICIAL FORFEITURE WITH
FULL

PROPERTY DESCRIPTIONS

Judge Ted Stewart

DECK TYPE: Civil

DATE STAMP: 09/01/2006 @ 13:42:01

CASE NUMBER: 1:06CV00101 TS

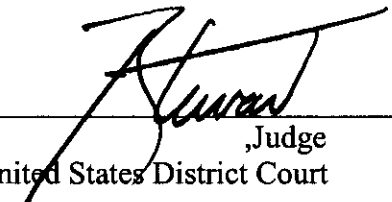
Plaintiff United States of America, having filed its Verified Complaint for Forfeiture *In Rem* in the above-entitled action and having arrested the defendant property herein:

- \$18,305.00 in U.S. Currency

It is HEREBY ORDERED that, pursuant to Rule C(6)(a) of the Supplemental Rules for Certain Admiralty and Maritime Claims, Federal Rules of Civil Procedure, the Notice of Civil Judicial Forfeiture with full property descriptions be published in the Salt Lake Tribune, a newspaper of general circulation in Salt Lake City, Utah.

DATED this 5th day of September, 2006.

BY THE COURT:



, Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

* * * * *

THE SKULL VALLEY BAND OF
GOSHUTE INDIANS and PRIVATE FUEL
STORAGE, L.L.C.

Plaintiffs,

vs.

DIANNE R. NIELSON, in her official
capacity as Executive Director of the Utah
Department of Environmental Quality, et al.,

and

MICHAEL O. LEAVITT, in his official
capacity as Governor of the State of Utah, et
al.

Defendants.

AMENDED ORDER MANDATING
SETTLEMENT NEGOTIATIONS

Case No. 2:01CV00270 TC

Judge Tena Campbell

Magistrate Judge Brooke C. Wells

* * * * *

On January 20, 2006, Plaintiffs filed a Joint Motion for Attorney Fees.¹ At the request of the respective parties briefing as well as a hearing on Plaintiffs' motion has been postponed a number of times. On August 25 this court reset a hearing on Plaintiffs' motion for October 10, 2006. Notwithstanding this hearing, the court hereby ORDERS the parties as follows:

¹ Docket no. 123.

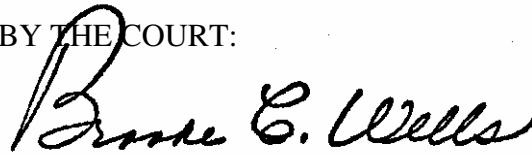
The parties are ORDERED to meet, confer, and explore possible options for resolution of Plaintiffs' Motion for Attorney Fees. Recently, in another case before this court the parties were able to meet and resolve their differences regarding a post-trial motion for attorney fees. By ordering the parties in this case to meet and explore possible settlement options the court hopes that a similar type of resolution may be reached. The court further

ORDERS that by September 26, 2006 the parties are to file a joint affidavit with the court detailing their efforts in resolving this motion. If a settlement is reached, the court is to be notified in writing by that same date and the hearing before this court will be stricken. If a settlement is not reached, then the court will go forward with the hearing as planned.

IT IS SO ORDERED.

DATED this 1st day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive, flowing style. The first letter "B" is large and loops around the first part of the name. The signature is positioned above a horizontal line.

HON. BROOKE C. WELLS
UNITED STATES MAGISTRATE JUDGE

VAN COTT, BAGLEY, CORNWALL & MCCARTHY
Stephen K. Christiansen (6512)
Sam Meziani (9821)
50 South Main Street, Suite 1600
Post Office Box 45340
Salt Lake City, Utah 84145-0340
Telephone: (801) 532-3333
Facsimile: (801) 534-0058

Richard N. Stapler, Jr. (8079)
Bruce D. Reemsnyder (6021)
KERN RIVER GAS TRANSMISSION COMPANY
2755 East Cottonwood Parkway, Suite 300
Salt Lake City, Utah 84121
Telephone: (801) 937-6000
Facsimile: (801) 937-6055

Attorneys for Kern River Gas Transmission Company

FILED
U.S. DISTRICT COURT
2006 SEP -1 P 12: 21
DISTRICT OF UTAH
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

KERN RIVER GAS TRANSMISSION
COMPANY, a Texas general partnership,

Plaintiff,

vs.

8.47 ACRES OF LAND, et al.,

and

[OTHER NAMED DEFENDANTS]

and

57 ACRES OF LAND, MORE OR LESS,
IN SALT LAKE COUNTY, UTAH,
KNOWN AS KERN RIVER TRACTS

**AMENDED SCHEDULING ORDER OF
JULY 31, 2006**

Case No. 2-02-CV-694TC

Honorable Tena Campbell

Honorable Samuel Alba

137.04W, 137.06W, 137.071W, 137.08W, 137.12W, 137.235W, 137.03W, 137.21B, 137.26W, 163.01W, 170W, 173, 175, 177W, 179W, 179.01W, 180W, 137.025W and 137.125W; SALT LAKE CITY, a municipal corporation; PACIFICORP, an Oregon corporation dba UTAH POWER AND LIGHT COMPANY and holder of easements of record; NORTH POINT CONSOLIDATED IRRIGATION COMPANY, a Utah corporation and holder of easements of record; AMERICAN TELEPHONE AND TELEGRAPH CO., a New York corporation and holder of an easement of record; and THOMAS E. JEREMY and REBECCA D. JEREMY, husband and wife, and GRACE J. CASSADAY, individuals and beneficiaries of an oil, gas and mineral reservation;

and

ANY UNKNOWN SUCCESSORS IN INTEREST TO ANY OF THE ABOVE DEFENDANTS;

and

ANY UNKNOWN OWNERS OF OR INTEREST HOLDERS IN THE ABOVE TRACTS OF LAND,

Defendants.

On July 31, 2006 at 9:00 a.m., a scheduling conference was held before the Honorable Samuel Alba. Stephen K. Christiansen, Bruce D. Reemsynder and Sam Meziani appeared on behalf of Kern River Gas Transmission Company. Douglas J. Parry and Jodi L. Howick appeared on behalf of Salt Lake City Municipal Corporation. The July 31 hearing was followed by communications and stipulations reached between counsel in consultation with the District

Judge's scheduling clerk to resolve scheduling conflicts. For good cause appearing, the following matters are SCHEDULED. The times and deadlines set forth herein may not be modified without approval of the Court and on a showing of good cause.

1. RULE 26(a)(2) REPORTS FROM EXPERTS

- | | | |
|----|-------------------------|-----------------|
| a. | Expert Reports: | <u>10/31/06</u> |
| b. | Counter Reports: | <u>11/22/06</u> |

2. OTHER DEADLINES

- | | | |
|----|---|-----------------|
| a. | Expert discovery to be completed by: | <u>01/31/07</u> |
| b. | Fact discovery to be completed by: | <u>01/31/07</u> |

3. TRIAL AND PREPARATION FOR TRIAL:

- | | | | |
|----|---|----------------------|--------------------|
| a. | Rule 26(a)(3) Pretrial Disclosures | | |
| | Plaintiffs | | <u>03/23/07</u> |
| | Defendants | | <u>03/23/07</u> |
| b. | Objections to Rule 26(a)(3) Disclosures (to be raised in Pretrial Order or via motion in limine) | | <u>04/02/07</u> |
| c. | Attorney Meeting¹ (to be held at the offices of plaintiff's counsel) | <u>10:00 a.m.</u> | <u>04/06/07</u> |
| e. | Final Pretrial Conference | <u>3:00 p.m.</u> | <u>04/23/07</u> |
| f. | Trial | <u>Length</u> | <u>Time</u> |
| | ii. Jury Trial | <u>5 days</u> | <u>Date</u> |
| | | <u>8:30 a.m.</u> | <u>05/14/07</u> |

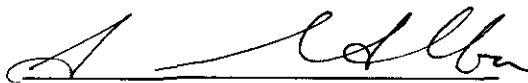
¹ The Attorney Meeting does not involve the Court. Counsel will agree on voir dire questions, jury instructions, and a pre-trial order, and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

4. **OTHER MATTERS:**

Counsel should contact chambers staff of the District Judge regarding Daubert motions to determine the desired process for filing and hearing of such motions. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 31st day of Aug., 2006.

BY THE COURT:



**Samuel Alba
U.S. Magistrate Judge**

Approved as to form:

/s/ Douglas J. Parry
Douglas J. Parry
Todd D. Weiler
PARRY ANDERSON & GARDINER
Attorneys for Defendant Salt Lake City

FILED
DISTRICT COURT
2006 SEP -6 A 10: 50

United States District Court District of Utah

UNITED STATES OF AMERICA

vs.

Kevin Brett Corwell

(For Revocation of Probation or Supervised Release)
(For Offenses Committed On or After November 1, 1987)

DISTRICT OF UTAH
DEPUTY CLERK

Case Number: 2:03-cr-00049-001 DB

Plaintiff Attorney: John Huber

Defendant Attorney: Randy Ludlow

Atty: CJA ___ Ret ☒ FPD ___

Defendant's Soc. Sec. No.: 4595

Defendant's Date of Birth: 08/27/1958

Defendant's USM No.: 10251-081

Defendant's Residence Address:
1972 East Bear Drive

Draper, Utah 84020
Country

9/5/2006
Date of Imposition of Sentence

Defendant's Mailing Address:
SAME

SAME
Country

THE DEFENDANT:

- ☒ admitted to allegation(s) I
- ☐ pleaded nolo contendere to allegation(s) which was accepted by the court.
- ☐ was found guilty as to allegation(s)

COP 04/08/2003 Verdict

Violation Number

I

Nature of Violation

The defendant submitted a Urine Sample which
Tested Positive for Cocaine

Date Violation
Occured

08/07/2006

- ☐ The defendant has been found not guilty on count(s)
- ☐ Count(s) (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

Upon release from confinement, the defendant shall be placed on supervised release for a term of
6 months

- ☐ The defendant is placed on Probation for a period of
The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

ALL PREVIOUS CONDITIONS ARE REINSTATED:

1. The defendant shall serve five months on home detention as a condition of supervision. The defendant shall remain in his residence at all times, except for work, religious, and medical purposes.
2. The defendant shall maintain full-time, verifiable employment or participate in educational, academic, or vocational development throughout the term of supervised release, as deemed appropriate by the United States Probation Office.
3. The defendant will submit to drug/alcohol testing as directed by the probation office and pay a one time \$115.00 fee to partially defer the costs of collection and testing.
4. The defendant shall participate in drug an/or alcohol aftercare treatment under a co-payment plan as directed by the United States Probation Office.
5. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ 5,000.00 , payable as follows:

- ☐ forthwith.
- ☒ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other:
-

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

- ☐ Restitution is payable as follows:
- ☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other: _____
- ☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5) (not to exceed 90 days after sentencing).
- ☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

RECOMMENDATION

- ☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

CUSTODY/SURRENDER

- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE:

9-5-2006

Dee Benson

Dee Benson

United States District Judge

Defendant: Kevin Brett Corwell
Case Number: 2:03-cr-00049-001 DB

Page 5 of 5

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

FILED
U.S. DISTRICT COURT

AUG 31 2006

2006 SEP - 1 JUDGE TENA CAMPBELL

BY: _____
DEPUTY CLERK

Tena Campbell
JUDGE TENA CAMPBELL

United States Probation Office
for the District of Utah

Report on Offender Under Supervision

Name of Offender: **Sammy Blackbear**

Docket Number: **2:03-CR-00990-002-TC**

Name of Sentencing Judicial Officer: **Honorable Tena Campbell**
United States District Judge

Date of Original Sentence: **September 19, 2005**

Original Offense: **Theft From Indian Tribal Organization**

Original Sentence: **36 Months Probation**

Type of Supervision: **Probation**

Supervision Began: **September 19, 2005**

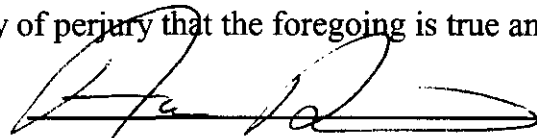
FILED
U.S. DISTRICT COURT
2006 SEP - 5 P 2 34
DISTRICT OF UTAH
BY: DEPUTY CLERK

SUPERVISION SUMMARY

On August 6, 2006, the defendant was arrested by officers of the Salt Lake City Police Department and charged with Assault, a class C misdemeanor; Interfering with Arrest, a class C misdemeanor; and Public Intoxication, a class C misdemeanor. On August 25, 2006, the defendant reported to the United States Probation Office for a general staffing in order to discuss this matter and look into a potential administrative staffing. In staffing this incident with the defendant, he adamantly denies these charges and reports that he will plead not guilty. Considering that the defendant is denying these allegations and that he has done relatively well under supervision through maintaining full-time employment and paying restitution consistently, it is recommended that no further adverse action be taken at this time.

If the Court desires more information or another course of action, please contact me at 535-4244.

I declare under penalty of perjury that the foregoing is true and correct.



Anrico Delray
United States Probation Officer
August 28, 2006

THE COURT:

- ☒ Approves the request noted above
☐ Denies the request noted above
☐ Other



Honorable Tena Campbell
United States District Judge

Date: 9-1-2006

CALLISTER NEBEKER & McCULLOUGH
CASS C. BUTLER (4202)
Gateway Tower East Suite 900
10 East South Temple
Salt Lake City, UT 84133
Telephone: (801) 530-7300
Facsimile: (801) 364-9127

Attorneys for Utah Receiver, Douglas Hawkes

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

LEHMAN BROTHERS BANK, FSB, Plaintiff, vs. BEVERLY HILLS ESTATES FUNDING, INC., et al., Defendant.	ORDER TO SHOW CAUSE Civil No. 2:03-CV-00612 PGC Judge Paul G. Cassell
--	--

TO: BRIAN EGAN
1972 WEST 350 NORTH
WEST POINT, UTAH 84105

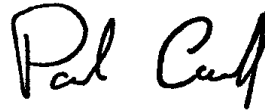
You are hereby ordered to show cause to this Court within 21 days of this Order as to:

(1) why your request to be included as a beneficiary of the Michael J. Fitzgerald Protective Committee Trust should not be denied; and/or (2) why you should not be required to wait until after all non-salesmen beneficiaries have received full restitution before you may apply for any recovery from the Trust for your own personal investments. Your response should be filed with

this Court and served on counsel for the Utah Receiver, Cass C. Butler, Callister Nebeker & McCullough, Zions Bank Building, Suite 900, 10 East South Temple, Salt Lake City, Utah 84133.

DATED this 5th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell". The signature is written in a cursive, flowing style.

PAUL G. CASSELL
U.S. DISTRICT COURT JUDGE

STEVEN B. KILLPACK, Federal Defender (#1808)
ROBERT K. HUNT, Assistant Federal Defender (#5722)
JAMIE ZENGER, Attorney for Defendant (#9420)
UTAH FEDERAL DEFENDER OFFICE
Attorneys for Defendant
46 West Broadway, Suite 110
Salt Lake City, Utah 84101
Telephone: (801) 524-4010

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRENT ROBERT STATHAM,

Defendant.

ORDER CONTINUING SENTENCING

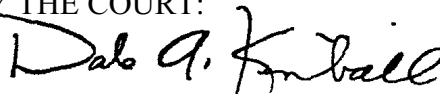
Case No. 2:04-CR-602 DAK

Based on the motion filed by the defendant, stipulation by Assistant United States Attorney, D. Loren Washburn and good cause appearing;

IT IS HEREBY ORDERED that Sentencing set for September 14, 2006, is hereby continued until October 13, 2006 at the hour of 3:30 p.m .

DATED this 6th day of September, 2006.

BY THE COURT:



HONORABLE DALE A. KIMBALL
United States District Court Judge

FILED
U.S. DISTRICT COURT

2006 SEP -1 A 11: 09

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

James D. Garrett, #6091
GARRETT & GARRETT
2091 East 1300 South, Suite 201
Salt Lake City, Utah 84108
Telephone: (801) 581-1144
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

FRANKLIN R. STOKES,
Defendant.

: ORDER TO CONTINUE SENTENCING
:
:
:

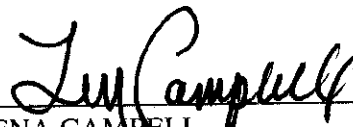
: Case No.: 2:04-CR-00818 TC
:
:

: Judge: Tena Campbell
:
:

Based upon the Defendant's Motion to Continue Sentencing and the reasons stated therein, it is ordered that the sentencing scheduled in this matter on August 31, 2006 is continued until October 18, 2006 at 230 p.m.

DATED this 30 day of August, 2006.

BY THE COURT:



TENA CAMPBELL
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

FILED
U.S. DISTRICT COURT

2006 SEP -6 A 10:51

LAURIE BARTUNEK,

Plaintiff,

vs.

FRED MEYER, INC.,

Defendant.

DISTRICT OF UTAH

ORDER

BY: _____
DEPUTY CLERK

Case No.: 2:04 CV 593 DB

Having considered Plaintiff's unopposed motion for an extension of time to respond to Defendant's motion for summary judgment, the Court GRANTS the motion. Plaintiff's reply is due September 19, 2006.

IT IS SO ORDERED.

DATED this 6th day of September, 2006.



Dee Benson
United States District Judge

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

2006 SEP 5 P 12:34
DISTRICT OF UTAH

BY: DEPUTY CLERK

RICHARDSON VAN LEEUWEN,

Plaintiff,

vs.

BOX B, et al.,

Defendant.

TRIAL ORDER

Case No. 2:04 CV 1192 TC

The final pretrial conference in this matter is scheduled for September 25, 2006, at 3:00 p.m.

This case is set for a six-day bench trial beginning October 16, 2006, at 8:30 a.m. The attorneys are expected to appear in chambers at 8:00 a.m. on the first day of trial for a brief pre-trial meeting.

Counsel are instructed as follows:

1. Court-Imposed Deadlines.

The deadlines described in this order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time is necessary **must** make an appropriate motion to the court.

2. Pretrial Order.

At the pretrial conference, plaintiff is to file a joint proposed pretrial order which has been approved by all counsel. The pretrial order should conform generally to the requirements of DuCivR 16-1(3) and to the approved form of pretrial order which is reproduced as Appendix IV to the Rules of Practice for the U.S. District Court for the District of Utah.

3. Jury Instructions

The court has adopted its own standard general jury instructions, copies of which may be obtained from the court prior to trial. The procedure for submitting proposed jury instructions is as follows:

- (a) The parties must serve their proposed jury instructions on each other **at least ten business days before trial**. The parties should then confer in order to agree on a single set of instructions to the extent possible.
- (b) If the parties cannot agree upon one complete set of final instructions, they may submit separately those instructions that are not agreed upon. However, it is not enough for the parties to merely agree upon the general instructions and then each submit their own set of substantive instructions. The court expects the parties to meet, confer, and agree upon the wording of the substantive instructions for the case.
- (c) The joint proposed instructions (along with the proposed instructions upon which the parties have been unable to agree) must be filed with the court **at least five business days before trial**. All proposed jury instructions must be in the following format:
 - (i) An original and one copy of each instruction, labeled and numbered at the top center of the page to identify the party submitting the instruction (e.g., "Joint Instruction No. 1" or "Plaintiff's Instruction No. 1"), and including citation to the authority that forms the basis for it.
 - (ii) A 3.5" high density computer diskette containing the proposed instructions (and any proposed special verdict form), without citation to authority, formatted for the most current version of WordPerfect. Any party unable to comply with this requirement must contact the court to make alternative arrangements.
- (d) Each party should file its objections, if any, to jury instructions proposed by any other party **no later than two business days before trial**. Any such objections must recite the proposed instruction in its entirety and specifically highlight the objectionable language contained therein. The objection should contain both a concise argument why the proposed language is improper and citation to relevant legal authority. Where applicable, the objecting party **must** submit, in conformity with paragraph 3(c)(i) - (ii) above, an alternative instruction covering the pertinent subject matter or principle of law. Any party

may, if it chooses, submit a brief written reply in support of its proposed instructions **on the day of trial**.

(e) All instructions should be short, concise, understandable, and neutral statements of law. Argumentative instructions are improper and will not be given.

(f) Modified versions of statutory or other form jury instructions (e.g., Devitt & Blackmar) are acceptable. A modified jury instruction must, however, identify the exact nature of the modification made to the form instruction and cite the court to authority, if any, supporting such a modification.

4. Special Verdict Form

The procedure outlined for proposed jury instructions will also apply to special verdict forms.

5. Requests for Voir Dire Examination of the Venire.

The parties may request that, in addition to its usual questions, the court ask additional specific questions to the jury panel. Any such request should be submitted in writing to the court and served upon opposing counsel **at least ten business days before trial**.

6. Findings of Fact and Conclusions of Law

At the conclusion of all non-jury trials, counsel for each party will be instructed to file with the court proposed findings of fact and conclusions of law. The date of submission will vary, depending upon the need for and availability of a transcript of trial and the schedule of court and counsel. Findings of fact should be supported, if possible, by reference to the record. For that reason, the parties are urged to make arrangements with Mr. Raymond Fenlon, the Court Reporter, for the preparation of a trial transcript. Conclusions of law must be accompanied by citations to supporting legal authority.

As with proposed jury instructions and special verdict forms, the proposed findings of fact and conclusions of law should be submitted to chambers both in hard copy and electronic format using WordPerfect .

7. Motions in Limine

All motions in limine are to be filed with the court at **at least five business days before trial**, unless otherwise ordered by the court.

8. Exhibit Lists/Marking Exhibits

All parties are required to prepare an exhibit list for the court's use at trial. The list contained in the pretrial order will not be sufficient; a separate list must be prepared. Plaintiffs should list their exhibits by number; defendants should list their exhibits by letter. Standard forms for exhibit lists are available at the clerk's office, and questions regarding the preparation of these lists may be directed to the courtroom deputy, Mary Jane McNamee, at 524-6116. All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.

9. In Case of Settlement

Pursuant to DUCivR 41-1, the court will tax all jury costs incurred as a result of the parties' failure to give the court adequate notice of settlement. Leaving a message on an answering machine or sending a notice by fax is not considered sufficient notice to the court. If the case is settled, counsel must advise the jury administrator or a member of the court's staff by means of a personal visit or by person-to-person telephonic communication.

10. Courtroom Conduct

In addition to the rules outlined in DUCivR 43-1, the court has established the following ground rules for the conduct of counsel at trial:

- (a) Please be on time for each court session. In most cases, trial will be conducted from 8:45 a.m. until 1:45 p.m., with two short (fifteen minute) breaks. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have an associate handle them for you.
- (b) Stand as court is opened, recessed or adjourned.
- (c) Stand when the jury enters or retires from the courtroom.
- (d) Stand when addressing, or being addressed by, the court.
- (e) In making objections, counsel should state only the legal grounds for the objection and should withhold all further comment or argument unless elaboration is requested by the court. For example, the following objections would be proper: "Objection . . . hearsay." or "Objection . . . foundation." The following objection would be improper unless the court had requested further argument: "Objection, there has been no foundation laid for the expert's opinion

and this testimony is inherently unreliable.”

(f) Sidebar conferences will not be allowed except in **extraordinary** circumstances. If a sidebar conference is held, the court will, if possible, inform the jury of the substance of the sidebar argument. Most matters requiring argument should be raised during recess.

(g) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.

(h) Do not greet or introduce yourself to witnesses. For example, “Good Morning, Mr. Witness. I represent the plaintiff in this case” is improper. Begin your examination without preliminaries.

(i) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel shall instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

(j) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and NOT by their first or given names.

(k) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

(l) Offers of, or requests for, a stipulation shall be made out of the hearing of the jury.

(m) In opening statements and in arguments to the jury, counsel shall not express personal knowledge or opinion concerning any matter in issue. The following examples would be improper: “I believe the witness was telling the truth” or “I found the testimony credible.”

(n) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session.

DATED this 5th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge

UNITED STATES DISTRICT COURT

Central

District of

Utah
FILED
DISTRICT COURT

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

Richard Runyan

Case Number: DUTX 2:05CR000109-001

USM Number: 12425-081

Robert Breeze

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) Two of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 USC § 841(a)(1)	Manufacture / Attempted Manufacture of Methamphetamine		2

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 1 of the Indictment ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/31/2006

Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell

Name of Judge

U.S. District Court Judge

Title of Judge

9-5-2006
Date

DEFENDANT: Richard Runyan
CASE NUMBER: DUTX 2:05CR000109-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

72 Months

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends to the BOP that the defendant be incarcerated at a facility in or near Phoenix, Arizona. The Court also recommends that the defendant participate in available drug treatment programs.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 9/28/2006

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Richard Runyan
CASE NUMBER: DUTX 2:05CR000109-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Richard Runyan
CASE NUMBER: DUTX 2:05CR000109-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall pay monthly child support/child support arrearage payments in an amount established by the Office of Recovery Services. The defendant shall keep current on these payments and attach a copy of said payment to his monthly supervision report.
2. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing.
3. The defendant shall submit his person, residence, office or vehicle to a search, conducted by a USPO at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Richard Runyan
 CASE NUMBER: DUTX 2:05CR000109-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$ 6,272.75

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Drug Enforcement Administration			
348 East South Temple			
Salt Lake City, Utah 84111			
Case #ML-0500026	\$6,272.75	\$6,272.75	100%

TOTALS	\$ <u>6,272.75</u>	\$ <u>6,272.75</u>
--------	--------------------	--------------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Richard Runyan
CASE NUMBER: DUTX 2:05CR000109-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☒ Payment in equal monthly (e.g., weekly, monthly, quarterly) installments of \$ 100.00 over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Richard Runyon 2:05CR000109-001; Lisa Runyon 2:05CR000109-002; Brian Gerhartz 2:04CR000109-003.
Restitution of \$6,272.75 is ordered joint and severally with all defendants, and shall be paid at a minimum rate of \$100 per month upon release from incarceration.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

1 THOMAS E. MOSS, United States Attorney
JACK B. HAYCOCK, Assistant United States Attorney
2 Attorneys for the United States of America
801 E. Sherman Avenue, Suite 192
3 Pocatello, Idaho 83201
Telephone: (208) 478-4166
4


5
6 IN THE UNITED STATES DISTRICT COURT
7 DISTRICT OF UTAH, CENTRAL DIVISION
8

9 UNITED STATES OF AMERICA, : CASE NO: 2:05 CR 131 TS
10 :
Plaintiff, :
11 :
vs. : ORDER ON GOVERNMENT'S
12 : MOTION FOR LEAVE TO
JOE RAKES, : DISMISS SUPERSEDING
13 : FELONY INFORMATION
Defendant.
14

15 The Court, having considered the Government's Motion for Leave to Dismiss the
16 Superseding Felony Information (Docket No. 56) in this case, hereby grants the
Government's motion.

17 The Superseding Felony Information (Docket No. 56) is hereby DISMISSED.
18 DATED this 6th day of September, 2006.

19 BY THE COURT:

20
21 
22 HONORABLE TED STEWART
United States District Court Judge
23
24
25
26
27
28

ROGER K. SCOWCROFT (5141)
Attorney for Defendant
8 East Broadway, Suite 500
Salt Lake City, Utah 84111
Phone (801) 746-2424; Fax (801) 746-5613

FILED
U.S. DISTRICT COURT

2006 SEP -1 A 11: 09

DISTRICT OF UTAH

RECEIVED

AUG 28 2006

OFFICE OF
JUDGE TENA CAMPBELL

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JESUS GARCIA-LLAMAS,

Defendant.

:

:

:

:

:

ORDER

Case No. 2:05 CR 655 TC

HON. T. CAMPBELL

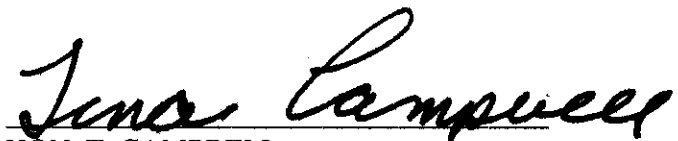
Based on Motion of defendant, Jesus Garcia-Llamas, and for good cause shown, IT IS

HEREBY ORDERED that the sentencing hearing in the above-numbered case is continued to the

23 day of October, 2006, at the hour of 230 a.m./p.m.

DATED this 28 day of August, 2006.

BY THE COURT:



HON. T. CAMPBELL
District Court Judge

MAILED/DELIVERED a copy of the foregoing Order to the office of the United States Attorney, 185 S. State St., Ste. 400, Salt Lake City, this 28 day of August, 2006.

/s/ Roger K. Scowcroft

UNITED STATES DISTRICT COURT

Central

District of

Utah

FILED
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

V.

Adron Lee Wilson

JUDGMENT IN A CRIMINAL CASE SEP -5 P 3:54

Case Number: DUTX 2:05CR000868-001

USM Number: 13266-081

Jamie Zenger

Defendant's Attorney

DISTRICT OF UTAH

DEPUTY CLERK

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 922(g)(1)	Felon in Possession of a Firearm		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/31/2006

Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell

Name of Judge

U.S. District Court Judge

Title of Judge

9-1-2006

Date

DEFENDANT: Adron Lee Wilson
CASE NUMBER: DUTX 2:05CR000868-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

24 Months

☐ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends to the BOP that the defendant be incarcerated at FCI Safford, Arizona. The Court also recommends that the defendant participate in vocational/educational programs.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Adron Lee Wilson
CASE NUMBER: DUTX 2:05CR000868-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Adron Lee Wilson

CASE NUMBER: DUTX 2:05CR000868-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the USPO
2. The defendant shall submit his person, residence, office or vehicle to a search, conducted by a USPO at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
3. The defendant shall participate in a mental health treatment program under a copayment plan as directed by the probation office, take any mental health medications as prescribed.
4. The defendant shall participate in academic or vocational development throughout the term of supervision as deemed appropriate by the USPO.

DEFENDANT: Adron Lee Wilson
 CASE NUMBER: DUTX 2:05CR000868-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

--	--	--	--

--	--	--	--

--	--	--	--

--	--	--	--

--	--	--	--

--	--	--	--

TOTALS	\$	0.00	\$	0.00
---------------	----	------	----	------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Adron Lee Wilson
CASE NUMBER: DUTX 2:05CR000868-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 4 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL BRANNON,

Defendant.

Case #: 2:05CR00886-PGC

JUDGMENT OF FORFEITURE

JUDGE: PAUL G. CASSELL

IT IS HEREBY ORDERED that:

1. As a result of a plea of guilty to Count 1 of the Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 924(d)(1), the defendant Michael Brannon shall forfeit to the United States all property, real or personal, that is derived from, used, or intended to be used in violation of 18 U.S.C. § 922(g)(3), including but not limited to:

- Winchester Shotgun, Serial # L2851115
- Glenfield .22 caliber Rifle, Serial #26576188
- Savage Arms .22 caliber Rifle, Serial # 92308
- Springfield .22 caliber Rifle, Serial # Unknown
- Amadeo Rossi 20 gauge shotgun, Serial # Unknown

2. The Court has determined that based on a guilty plea of unlawful user of controlled substances in possession of firearms, that the above-named property is subject to forfeiture, that the defendant had an interest in the property, and that the government has established the requisite nexus between such property and such offense.

IT IS FURTHER ORDERED:

3. Pursuant to Fed. R. Crim. P. 32.2(b)(3), the Preliminary Order of Forfeiture is made final as to the defendant and the Judgment of Forfeiture shall be made part of the sentence and included in the judgment.

4. Any petition filed by a third party asserting an interest in the subject property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.

5. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

6. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. § 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

7. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Dated this 5th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

PAUL G. CASSELL, Judge
United States District Court

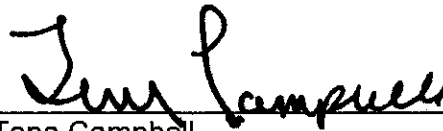
BY: _____
DEPUTY CLERK

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above-entitled

case is hereby dismissed, with prejudice, each party to bear their own respective costs.

Dated this 31 day of Aug, 2006.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Tena Campbell", is written over a horizontal line.

Tena Campbell
United States District Court Judge

APPROVED AS TO FORM:

A. Bryce Dixon
Attorney for Plaintiff

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN C. WOOD,

Plaintiff,

vs.

AT&T CORP.,

Defendant.

ORDER AND MEMORANDUM DECISION

Case No. 2:05 CV 131

Plaintiff John C. Wood filed this lawsuit claiming that his former employer, AT&T Corp., interfered with his right to receive leave under the Family Medical Leave Act (“FMLA”), 29 U.S.C. §§ 2611 to 2654. Mr. Wood also alleges that his employment with AT&T was improperly terminated as a direct result of AT&T’s failure to grant him requested leave.

Before the court is AT&T’s motion for summary judgment on Mr. Wood’s claims. AT&T argues that it granted Mr. Wood the FMLA leave that he requested and also allowed Mr. Wood to miss additional work days even though Mr. Wood failed to gain approval for those additional absences. Accordingly, AT&T argues that it not only complied with its FMLA obligations, but actually exceeded those requirements. Further, AT&T asserts that Mr. Wood was not penalized for taking leave, whether approved or unapproved, and that his termination was necessitated by Mr. Wood’s inability to meet performance requirements.

The parties dispute whether Mr. Wood requested additional FMLA leave time, which possibly would have excused his otherwise unapproved absences. Further, it is not clear from the record whether AT&T would have imposed different performance criteria on Mr. Wood if

extended FMLA leave had been granted. Accordingly, AT&T has not established that it is entitled to summary judgment.

Background

Mr. Wood began his employment with AT&T as an account executive in the Growth Markets groups. After working in that capacity for several months, Mr. Wood was reassigned to a new organization known as the Emerging Markets group. His primary responsibility on the Emerging Markets group was to acquire new business for AT&T. Executives in the Emerging Markets group were held to a high performance standard and AT&T would quickly implement corrective measures in the event an executive's performance failed to meet expectations.

Mr. Wood Takes Leave

About two years after Mr. Wood began working with AT&T's Emerging Market Group, he began to have difficulty sleeping and started to experience periodic panic attacks. On occasions, Mr. Wood suffered panic attacks while at work. A short time after those problems began to surface, AT&T denied Mr. Wood access to his floor of the company office building, citing employee concerns about his behavior. Soon thereafter, AT&T investigated Mr. Wood for improper account sales activities. Although exonerated, Mr. Wood was without his laptop during the investigation. While all these events were unfolding, Mr. Wood began to seek professional treatment for his insomnia and panic attacks.

A few months later, on January 19, 2003, Mr. Wood e-mailed his manager, Richard Sheldon, and requested a medical leave of absence to pursue aggressive treatment for his condition. The e-mail specifically referred to the FMLA and requested that Mr. Sheldon complete a form so that Mr. Wood could forward the completed form to AT&T's FMLA center.

The information that Mr. Wood submitted to AT&T's FMLA center shows that he

requested FMLA leave to run from February 3, 2003, until April 19, 2003. He chose the start date for his requested leave after speaking to an AT&T FMLA representative, who informed Mr. Wood that he could use accumulated paid-leave days through February 3, 2003, and that those days would not be counted against the amount of FMLA leave to which he was entitled. Complying with a request from AT&T, Mr. Wood also submitted a medical certification prepared by his psychiatrist, Mark Neuman, M.D., in support of his leave request. In the medical certification, Dr. Neuman stated his opinion that Mr. Wood would need to be absent from work for three months.

Also in January of 2003, Mr. Wood learned about AT&T's Disability Plan, which provides short-term disability benefits and leave to qualifying employees. AT&T's Disability Plan is administered by MetLife, a separate company from AT&T. In fact, AT&T's FMLA center is located in New Jersey, while the MetLife office that handles the Disability Plan is located in Kentucky.

Mr. Wood received information outlining the Disability Plan. The documentation received by Mr. Wood states that if an employee qualifies for both FMLA leave and the Disability Plan, the leave taken under those programs runs concurrently. Mr. Wood obtained the necessary forms and applied for disability leave shortly after submitting his formal request for FMLA leave.

AT&T ultimately approved Mr. Wood's for participation in the Disability Plan. A short time later, AT&T granted Mr. Wood's FMLA request. AT&T informed Mr. Wood that his FMLA leave would run from January 20, 2003 until May 20, 2003. The record indicates that AT&T began Mr. Wood's FMLA leave on January 20, 2003, because Mr. Wood had been approved to start on the Disability Plan on January 20, 2003, and AT&T wanted to synchronize

the start dates of the leave granted under the two programs.¹

Mr. Wood was granted disability leave through March 17, 2003. But his FMLA grant extended until May 20, 2003. During his deposition, Mr. Wood testified that he was confused by the FMLA grant because he believed that he was only entitled to twelve weeks of leave under the FMLA. The document approving Mr. Wood's FMLA leave, although far from a model of clarity, appears to contemplate two types of leave: full-time leave and intermittent leave. The most plausible reading of the FMLA grant is that Mr. Wood was given full-time leave to run for the duration of his disability coverage and intermittent leave for doctor's visits thereafter. But for the purposes of this motion, the court accepts that Mr. Wood was understandably confused by the documentation granting his FMLA request.

As March 17 approached, Mr. Wood contacted AT&T's disability office to request an extension of his disability leave. Mr. Wood submitted further medical documentation to the disability office in support of his request. The disability office informed Mr. Wood that an extension was not warranted based on documents he had submitted. Mr. Wood then asked the disability office if he could abandon disability coverage and rely solely on the FMLA. The office informed Mr. Wood that the disability office and AT&T's FMLA center operated independently of one another and that the disability office could not help him with FMLA questions.

Mr. Wood returned to work on March 18, but arrived late due to a panic attack he

¹Mr. Wood asserts that "AT&T interfered with [his] FMLA statutory entitlement to receive FMLA leave during both January 2003 and April 2003." (Plf.'s Memo. in Opp'n to Def.'s Mot. for Summ. J. 10 (dkt. #20).) But Mr. Wood makes no argument explaining his contention that interference occurred in January of 2003. Accordingly, the court confines its analysis to the alleged interference that occurred after the time Mr. Wood's approved disability leave ended.

suffered earlier that morning. Mr. Wood did not work from March 19 through March 21 because he was granted bereavement leave to attend the funeral of his step-father. While at work on March 25, Mr. Wood suffered a panic attack and left work to receive treatment. Mr. Wood contacted the disability office, which informed him that it required further documentation before it could approve additional disability leave. Mr. Wood did not return to work again until April 24, 2003.

Contact between Mr. Wood and the disability office continued while he was away from work. The disability office informed Mr. Wood that if he failed to submit supporting documentation, it would be unable to retroactively grant him disability leave for his accumulating absences. Not satisfied by the submitted documentation, AT&T ultimately denied Mr. Wood's request for additional disability leave. Mr. Wood did not appeal that decision and returned to work on April 24, 2003.

The parties dispute whether Mr. Wood contacted AT&T's FMLA center to explore the possibility of securing FMLA leave past March 17. Mr. Wood claims that he contacted the FMLA center and was informed that his failure to qualify for a leave extension under the Disability Plan precluded him from securing additional FMLA leave. AT&T asserts that no such contact occurred.²

Mr. Wood Is Dismissed

²AT&T asks the court to disregard Mr. Wood's allegations regarding his contact with the FMLA center. According to AT&T, the affidavit detailing Mr. Wood's contact with the FMLA center contradicts Mr. Wood's earlier deposition testimony. But a review of the deposition transcript reveals that Mr. Wood equivocated when asked about his attempts to contact the FMLA center. In fact, Mr. Wood indicated that he would need to review his own records before he would be able to provide a satisfactory answer. Accordingly, Mr. Wood's affidavit is not inconsistent with his deposition testimony and the court is convinced that the affidavit was not prepared in an attempt to raise a sham issue of fact.

As an account executive, Mr. Wood had certain performance benchmarks that he was expected to meet on an monthly and annual basis. Generally speaking, if an account executive was underperforming, AT&T mandated implementation of steps designed to increase sales numbers. Stripped of its specifics, the steps AT&T would take to remedy the under performance of an account executive were as follows:

(1) If monthly sales numbers fell below a rate needed to achieve the company-imposed annual sales quota, a manager would speak with the executive and formulate a plan to boost sales numbers.

(2) If the executive's sales numbers remained below the monthly sales mark for a successive month, then the executive would be placed on Performance Improvement Plan ("PIP") A. PIP A is essentially a thirty-day probationary period.

(3) While on PIP A, the executive's numbers are monitored and if they exceed the monthly quota, PIP A ends. But if the executive is still not on pace to meet the annual sales requirement, PIP A is extended an additional month. If the monthly numbers remain low during the PIP A period, then the executive is placed on PIP B.

(4) Once placed on PIP B, the executive either chooses to spend thirty paid days seeking a new job or receives a final thirty days to attempt to elevate sales numbers. If the executive successfully elevates sales numbers, then the PIP period ended, provided that, if annual sales numbers drop below required levels in the ensuing year, the executive is returned to PIP B and is obligated to select the thirty-day job search option.

At the time Mr. Wood started his approved leave, he had been on PIP A for seventeen days. Upon his return to work, AT&T gave Mr. Wood a "ramp-up" sales quota, which waived his March quota, reduced his April quota to half of normal, and imposed a full quota for May.

Mr. Wood failed to meet the sales numbers and, once on PIP B, selected the thirty-day job search option. Mr. Wood's employment with AT&T ended on June 13, 2003.

Legal Standard Governing Summary Judgment

Federal Rule of Civil Procedure 56 permits the entry of summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51 (1986); Adler v. Wal-Mart Stores, Inc., 144 F.3d 664, 670 (10th Cir. 1998). The court must “examine the factual record and reasonable inferences therefrom in the light most favorable to the party opposing summary judgment.” Applied Genetics Int’l, Inc. v. First Affiliated Sec., Inc., 912 F.2d 1238, 1241 (10th Cir. 1990). “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient [to overcome a motion for summary judgment]; there must be evidence on which the jury could reasonably find for the plaintiff.” Liberty Lobby, 477 U.S. at 252.

Analysis

Mr. Wood’s complaint alleges that AT&T interfered with his right to receive FMLA leave and that his employment was improperly terminated because AT&T imposed performance expectations that would not have applied had he been appropriately granted leave. AT&T asserts that it is entitled to summary judgment because Mr. Wood was granted full-time FMLA leave from January 20 through March 17 and at no time did Mr. Wood request additional FMLA leave. AT&T further argues that Mr. Wood essentially took an unpaid leave of absence from March 18 through April 23 and that Mr. Wood was not penalized for taking that leave.

“The interference or entitlement theory is derived from the FMLA’s creation of

substantive rights. If an employer interferes with the FMLA-created right to medical leave or to reinstatement following the leave, a deprivation of this right is a violation regardless of the employer's intent." Smith v. Diffie Ford-Lincoln-Mercury, Inc., 298 F.3d 955, 960 (10th Cir. 2002). The parties dispute whether Mr. Wood made a request for FMLA leave that, if granted, would have excused his absences after March 17. If Mr. Wood did make a meritorious request that was improperly ignored by AT&T, it is possible that the performance requirements imposed on Mr. Wood upon his return to work in April were improper. Accordingly, summary judgment is inappropriate.

Interference with FMLA Leave

The FMLA allows an "eligible employee" to take up to twelve weeks of leave if the employee suffers from "a serious health condition that makes the employee unable to perform the functions of the position of such employee." 29 U.S.C. § 2612(a)(1)(D). An employer can require an employee to submit a certification from a medical provider indicating that the employee is suffering from a serious health condition. Id. § 2613(a). Additionally, an employer can request recertification if an extension of FMLA leave is requested. See 29 CFR § 825.308.

The burden placed on an employee requesting leave is slight. An employee is only required to contact the employer by any number of means (including telephone) and convey that leave is needed. "The employee need not expressly assert rights under the FMLA or even mention the FMLA, but may only state that leave is needed. The employer will be expected to obtain any additional required information through informal means." 29 CFR § 825.303.

AT&T did grant Mr. Wood FMLA leave. But the duration of that leave is less than clear. In a letter from Linda Noble, an AT&T health affairs FMLA counselor, AT&T informed Mr. Wood that his request for FMLA leave was approved through May 20, 2003, and that "[i]f an

intermittent leave, absences can be expected to occur approximately: [handwritten] (1) disability, (2) Dr. appt every 2 weeks." (Letter from Linda Noble to John Wood, Feb. 10, 2003, attached as Ex. 4 to Plf.'s Memo. Opposing Def.'s Mot. for Summ. J. (dkt. #20-1).) As indicated above, Ms. Noble was more than likely approving Mr. Wood for full-time FMLA leave to run concurrently with his previously approved disability leave and for intermittent leave for doctor's visits after his return to work. But given the somewhat cryptic approval letter, Mr. Wood's testimony that he was confused about the duration of his approved FMLA leave is understandable.

What is clear is that Mr. Wood knew that his disability leave would end on March 17. It is the factual dispute concerning the steps Mr. Wood took as the end of his disability leave approached that precludes the entry of summary judgment. It is undisputed that Mr. Wood at least raised the possibility of continuing to miss work by using FMLA leave instead of disability leave. It is also undisputed that Mr. Wood was informed that the disability office was separate from the FMLA center and that Mr. Wood would need to contact the FMLA center to resolve his questions concerning FMLA leave. What is disputed is whether Mr. Wood contacted the FMLA center and expressed a desire to receive additional FMLA leave. Mr. Wood asserts that he did contact the FMLA center to request leave and AT&T denies that assertion.

In its briefing, AT&T implies that this dispute is immaterial because Mr. Wood's failure to submit a formal, written FMLA request in accordance with AT&T policy is fatal to his claim. But while "[a]n employer may . . . require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave," the "failure to follow such internal employer procedures will not permit an employer to disallow or delay an employee's taking FMLA leave if the employee gives timely verbal notice." 29 C.F.R. § 825.302(d).

The factual dispute concerning Mr. Wood's attempts to request additional FMLA leave to

run following the end of his disability leave precludes the entry of summary judgment on Mr. Wood's FMLA interference claim. The court notes that the parties contest whether Mr. Wood's contact with AT&T's disability office alone would be sufficient to trigger AT&T's obligations under the FMLA. But the court need not resolve that issue because the existence of disputed facts prevent the entry of summary judgment in any event.

Mr. Wood's Termination

Mr. Wood's claim that his employment was improperly terminated is dependent upon a finding that AT&T improperly denied him FMLA leave through March and into April. According to Mr. Wood, if AT&T had approved additional leave under the FMLA, he would not have returned to work until April and he would not have been required to meet his sales quota until the end of July of 2003. Mr. Wood states that AT&T's practice is to impose a 0% monthly sales quota on an executive returning from approved leave for the first partial month after the executive's return and the first full month following the executive's return. A 50% monthly sales quota is imposed during the second full month following the executive's return and the full 100% monthly sales quota applies to the third full month following the executive's return. Mr. Wood contends that his leave through April should have been approved and that his full monthly sales quota would not have been in effect until July if AT&T had approved his leave.

AT&T counters that Mr. Wood was not terminated for his failure to meet his monthly sales quota, but rather for his inability to meet goals related to his annual sales quota. In other words, AT&T states that while AT&T does generally provide ramp up time on monthly sales quotas, those ramp up times are inapplicable to the requirements of PIP A, which Mr. Wood was seventeen days into upon his return to work. But AT&T's argument does not rebut Mr. Wood's contention that he was potentially penalized for his absences following the conclusion of his

approved disability leave. Under AT&T's approach, the amount of sales that Mr. Wood was required to secure in order to effectively save his job increased during the time period that Mr. Wood may have been improperly denied FMLA leave. Because the sales that Mr. Wood needed to meet his annual sales goal increased during March and April, Mr. Wood may have suffered harm if AT&T interfered with Mr. Wood's right to receive approved leave during that time.

Conclusion

The parties dispute whether Mr. Wood requested that his absences from work following the conclusion of his disability leave be covered by the FMLA. Additionally, the record indicates that Mr. Wood may have been penalized by the performance requirements placed on him by AT&T due to AT&T's decision to not approve Mr. Wood's absences following the conclusion of his disability leave. Accordingly, as the record now stands, the court is unable to enter summary judgment. AT&T Corp.'s Motion for Summary Judgment (dkt. #14) is DENIED.

SO ORDERED this 6th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge

FILED
DISTRICT COURT

2006 SEP -5 A 11: 37

CLERK OF UTAH

By: _____
DEPUTY CLERK

Steven A. Miller (*admitted pro hac vice*)
SACHNOFF & WEAVER LTD.
10 S. Wacker Drive
Suite 4000
Chicago, IL 60606
Telephone: (312) 207-1000
Facsimile: (312) 207-6400

James K. Tracy (#6668)
Adelaide Maudsley (#8791)
CHAPMAN AND CUTLER LLP
Utah One Center
201 South Main Street, Suite 2000
Salt Lake City, Utah 84111
Telephone: (801) 320-6700
Facsimile: (801) 359-8256

Attorneys for Defendants

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

WHITE FAMILY HARMONY
INVESTMENT, LTD.,

Plaintiff,

v.

TRANSWESTERN WEST VALLEY,
LLC, TRANSWESTERN METRO
BUSINESS PARK, LLC, AND
BUSINESS PROPERTIES, LLC,

Defendants.

~~[PROPOSED]~~ PROTECTIVE ORDER

Civil No. 2:05-CV-00495 DAK

Judge Dale A. Kimball

Because of the likelihood that confidential information of one or more of the parties hereto will be sought by another party in discovery herein, and because a confidentiality order would expedite discovery, enhance judicial economy and protect

important rights of the parties, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, it is hereby ORDERED as follows:

A. NON-DISCLOSURE OF CONFIDENTIAL DOCUMENTS

Except with the prior written consent of the party or other person originally designating a document to be a confidential document, or as hereinafter provided under this order, no Confidential Document may be disclosed to any person, nor shall any information from a Confidential Document be disclosed to any person.

1. A "Confidential Document" means any document designated as confidential in good faith by the party producing the document.

Designation as confidential may be by Bates number in a separate cover letter or by stamping the designation of "confidential" on the face of all pages of the document.
2. For the purposes of this Order, the term "document" means any tangible thing on which information is stored, recorded or depicted, whether produced or created by a party or another person and whether produced pursuant to a request for production or subpoena, by agreement or otherwise. It includes without limitation, writings, drawings, accounts, graphs, charts, photographs, phonograph recordings, microfilm, computer disks, CD-ROM compilations, electronic audiotape or videotape recordings, and other data compilations. It includes all drafts and variations thereof, and all non-identical copies of each document as well as Interrogatory answers, responses to requests for admissions, deposition

transcripts and exhibits, pleadings, affidavits and briefs that quote, summarize or contain materials entitled to protection.

3. Counsel of record receiving documents designated as Confidential may *shall not be obligated to challenge, or be deemed to agree with, the* designation. Failure to challenge a designation shall not preclude a subsequent challenge to the validity of such designation. The designated documents shall remain subject to the terms of this Protective Order until such time as the Court has ruled on any motion disputing the designation. The parties agree to attempt to work out in good faith any disputes regarding a designation prior to bringing the issue before the court. In the *event of a dispute as to the designation of Confidential documents, any* party to this Protective Order may present the dispute to the Court by notice of motion to the other parties to this Protective Order and the Court's determination shall thereafter govern the use or disclosure of such documents.

B. PERMISSIBLE DISCLOSURES

Notwithstanding paragraph A above, Confidential Documents may be disclosed:

1. to the parties and counsel for the parties in this action who are actively engaged in the conduct of this litigation;
2. to the partners, associates, secretaries, paralegals, assistants and employees of such attorneys to the extent reasonably necessary to render professional services in the litigation; and

3. to outside consultants or experts retained for the purpose of assisting counsel in the litigation;
4. to the Court in compliance with the terms and conditions of this stipulation and order.

provided, however, that in all such cases, the individual to whom disclosure is to be made shall be advised that the Confidential Document has been designated confidential and that unauthorized disclosures of the Confidential Documents are subject to punishment as contempt of court, to sanctions authorized by the Federal Rules of Civil Procedure, and to liability in damages to those parties harmed by unauthorized disclosures.

C. CONFIDENTIAL INFORMATION IN DEPOSITIONS

Parties may, within seven (7) days after receiving a deposition, or seven (7) days of the entry of this Order with respect to depositions preceding such entry, designate pages of the transcript (and exhibits thereto) as confidential with the following legend:

“CONFIDENTIAL—SUBJECT TO PROTECTION PURSUANT TO COURT ORDER.” Until expiration of the seven (7) day period, the entire deposition will be treated as subject to protection against disclosure under this Order. If no party or deponent timely designates confidential information in a deposition, then none of the transcript or its exhibits will be treated as confidential; if a timely designation is made, the confidential portions and exhibits shall be filed under seal separate from the portions and exhibits not so marked.

D. SUBPOENA BY OTHER COURTS OR AGENCIES

If another court or an administrative agency subpoenas or orders production of Confidential Documents that a party has obtained under the terms of this Order, or if a party receives notice of a motion, or other request filed in another court or proceeding seeking disclosure of Confidential Documents, such party shall promptly notify the party or other person who designated the documents as confidential of the pendency of such motion, request, subpoena or order. The party shall not impair the right or opportunity of the party or other person who designated the document as confidential to resist discovery or production of the Confidential Document.

E. FILING

Confidential Documents need not be filed with the Clerk except when necessary in connection with other matters pending before the Court. If filed, they shall be filed under seal and shall remain sealed while in the office of the Clerk so long as they retain their status as Confidential Documents.

F. CLIENT CONSULTATION

Nothing in this Order shall prevent or otherwise restrict counsel from rendering advice to their clients, and in the course thereof, relying generally on examination of Confidential Documents; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not disclose the contents of any item so designated except pursuant to the procedures of Paragraph B.

G. USE

Persons obtaining access to Confidential Documents under this Order shall use the information only in relation to this litigation (including appeals and retrials), and shall not use such information for any other purpose, including business, governmental, commercial, or administrative or judicial proceedings.

H. NON-TERMINATION

The provisions of this Order shall not terminate at the conclusion of this action. Within 120 days after final conclusion of all aspects of this litigation, Confidential Documents and all copies of same (other than exhibits of record) shall be returned to the party or person who produced such documents, or, at the option of the producer (if it retains at least one copy of the same), destroyed. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the party who produced the documents not more than 150 days after final termination of this litigation.

I. MODIFICATION PERMITTED

Nothing in this Order shall prevent any party or other person from seeking modification of this Order or from objecting to discovery that it believes to be otherwise improper.

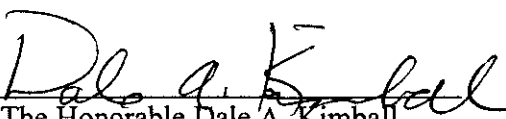
J. INADVERTENT PRODUCTION

The inadvertent or unintentional production of documents containing confidential or secret information at the time of production or disclosure shall not be deemed waiver in whole or in part of a party's claim of confidentiality or secrecy, either as to the specific

document produced or as to any other document relating thereto or on the same related subject matter. Any party who inadvertently or unintentionally produces documents containing confidential or secret information may thereafter designate those documents as confidential in accordance with A.1. Notice of any claim of privilege as to any matter claimed to have been produced inadvertently shall be given to the opposing party or parties.

DATED this 5th day of September, 2006.

BY THE COURT:

By: 
The Honorable Dale A. Kimball
United States District Court Judge

Approved as to form by:

DART, ADAMSON & DONOVAN

By: 

Craig G. Adamson
Craig A. Hoggan
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

KLEIN-BECKER usa, LLC, a Utah LLC

Plaintiff,

v.

ALL WEB LLC, a New Jersey LLC dba ALL
WEB NUTRITION, INC., LIPOSLIM
SYSTEMS, STERLING-GRANT
LABORATORIES, ROB DENTE, an
individual, and John Does 1 through 10,

Defendants.

ORDER SETTING BRIEFING
SCHEDULE AND HEARING DATE FOR
PLAINTIFF'S MOTIONS

Civil No. 2:05 cv 518 TC

Judge Tena Campbell

Magistrate Judge Brooke C. Wells

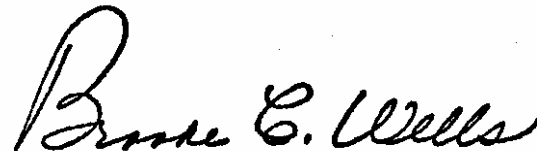
Plaintiff has filed a Motion to Expedite Discovery¹ and a Motion for Order to Show Cause and for Sanctions.² Plaintiff seeks expedited briefing on the motions and a hearing before this court. For good cause shown, the court enters the following schedule:

Defendants are to file any opposition to Plaintiff's motions by September 15, 2006.

Plaintiff may file any reply memoranda by September 22, 2006.

The court will hold a hearing on Plaintiff's motions on October 2, 2006 at 10:00 a.m.

DATED this 6th day of September, 2006.



Brooke C. Wells
United States Magistrate Judge

¹ Docket no. 17.

² Docket no. 21.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central Division for the District of Utah

CITY OF PAGE,

Plaintiff,

vs.

UTAH ASSOCIATED MUNICIPAL
POWER SYSTEMS,

Defendant.

**SCHEDULING ORDER AND
ORDER VACATING HEARING**

Case No. 2:05-CV-921 TC

District Judge Tena Campbell

Magistrate Judge

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for November 8, 2006, at 2:30 p.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | | | |
|-----------|---|----------------------|
| 1. | PRELIMINARY MATTERS | <u>DATE</u> |
| | Nature of claim(s) and any affirmative defenses: | |
| | a. Was Rule 26(f)(1) Conference held? | <u>Yes</u> |
| | b. Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |
| | c. Was 26(a)(1) initial disclosure completed? | <u>Yes</u> |
| 2. | DISCOVERY LIMITATIONS | <u>NUMBER</u> |
| | a. Maximum Number of Depositions by Plaintiff(s) | <u>No Limit</u> |
| | b. Maximum Number of Depositions by Defendant(s) | <u>No Limit</u> |
| | c. Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| | d. Maximum Interrogatories by any Party to any Party | <u>60</u> |
| | e. Maximum requests for admissions by any Party to any Party | <u>No Limit</u> |
| | f. Maximum requests for production by any Party to any Party | <u>No Limit</u> |

		<u>DATE</u>
3.	AMENDMENT OF PLEADINGS/ADDING PARTIES²	
	a. Last Day to File Motion to Amend Pleadings	<u>5/1/07</u>
	b. Last Day to File Motion to Add Parties	<u>11/1/06</u>
4.	RULE 26(a)(2) REPORTS FROM EXPERTS³	
	a. Plaintiff	<u>3/1/07</u>
	b. Defendant	<u>3/1/07</u>
	c. Counter Reports	<u>4/2/07</u>
5.	OTHER DEADLINES	
	a. Discovery to be completed by:	
	Fact discovery	<u>6/1/07</u>
	Expert discovery	<u>7/2/07</u>
	b. <i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e)	
	c. Deadline for filing dispositive or potentially dispositive motions	<u>7/2/07</u>
6.	SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION	
	a. Referral to Court-Annexed Mediation	<u>No</u>
	b. Referral to Court-Annexed Arbitration	<u>No</u>
	c. Evaluate case for Settlement/ADR on	<u>6/1/07</u>
	d. Settlement probability:	<u>Fair</u>
7.	TRIAL AND PREPARATION FOR TRIAL:	
	a. Rule 26(a)(3) Pretrial Disclosures ⁴	
	Plaintiffs	11/2/07
	Defendants	11/16/07
	b. Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)	
	c. Special Attorney Conference ⁵ on or before	11/30/07
	d. Settlement Conference ⁶ on or before	12/14/07
	e. Final Pretrial Conference	2:30 p.m. 12/28/07

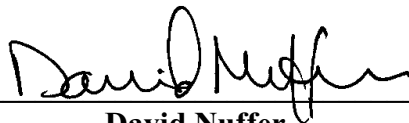
f. Trial	<u>Length</u>	<u>Time</u>	<u>Date</u>
i. Bench Trial			
ii. Jury Trial	<u>6 Weeks</u>	<u>8:30 a.m.</u>	<u>1/7/08</u>

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 5th day of September, 2006.

BY THE COURT:


David Nuffer
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.
6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MATTHEW A. MACKIN,)	
)	
Petitioner,)	Case No. 2:05-CV-944 DAK
)	
v.)	District Judge Dale A. Kimball
)	
SHERIFF AARON KENNARD,)	O R D E R
)	
Respondent.)	Magistrate Judge Paul Warner

The last mail item the court sent to Petitioner--dated August 25, 2006--has been returned, marked, "RETURN TO SENDER . . . PRISONER RELEASED." The court has not heard from Petitioner since November 15, 2005.

IT IS THUS ORDERED that, within thirty days, Plaintiff must show cause why his complaint should not be dismissed for failure to prosecute.¹

DATED this 6th day of September, 2006.

BY THE COURT:



PAUL WARNER
United States Magistrate Judge

¹ See Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31, 82 S. Ct. 1386, 1388-89 (1962); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003).

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH 2: 21
2006 SEP - 14

CENTRAL DIVISION

DISTRICT OF UTAH

DAVID W. GLASSCOCK,)
)
Plaintiff,) Case No. 2:05-CV-945 TC
)
v.) District Judge Tena Campbell
)
DR. RICHARD GARDEN et al.,) **O R D E R**
)
Defendants.) Magistrate Judge Samuel Alba

BY: DEPUTY CLERK

Plaintiff, David W. Glasscock, has filed a *pro se* prisoner civil rights complaint.¹ Plaintiff's application to proceed *in forma pauperis* has been granted. Plaintiff now moves for appointed counsel and service of process.

The Court first considers the motion for appointed counsel. Plaintiff has no constitutional right to counsel.² However, the Court may in its discretion appoint counsel for indigent inmates.³ "The burden is upon the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel."⁴

When deciding whether to appoint counsel, the district court

¹See 42 U.S.C.S. § 1983 (2006).

²See *Carper v. Deland*, 54 F.3d 613, 616 (10th Cir. 1995); *Bee v. Utah State Prison*, 823 F.2d 397, 399 (10th Cir. 1987).

³See 28 U.S.C.S. § 1915(e)(1) (2006); *Carper*, 54 F.3d at 617; *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991).

⁴*McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985).

should consider a variety of factors, "including 'the merits of the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims.'"⁵

Considering the above factors, the Court concludes here that (1) it is not clear at this point that Plaintiff has asserted a colorable claim; (2) the issues in this case are not complex; and (3) Plaintiff is not incapacitated or unable to adequately function in pursuing this matter. Thus, the Court denies for now Plaintiff's motion for appointed counsel.

The Court next denies Plaintiff's motions for service of process. These motions are unnecessary because Plaintiff is proceeding *in forma pauperis*.⁶ In such cases, "[t]he officers of the court shall issue and serve all process, and perform all duties in such cases."⁷ The Court will screen Plaintiff's amended complaint at its earliest convenience and determine whether to dismiss it or order it to be served upon Defendants.⁸ Plaintiff need do nothing to trigger this process.

⁵*Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (quoting *Williams*, 926 F.2d at 996); accord *McCarthy*, 753 F.2d at 838-39.

⁶See 28 U.S.C.S. § 1915 (2006).

⁷See *id.* § 1915(d).

⁸See *id.* § 1915A.


IT IS HEREBY ORDERED that:

(1) Plaintiff's request for appointed counsel is denied, (see File Entry # 16); however, if, after the case is screened, it appears that counsel may be needed or of specific help, the Court will ask an attorney to appear pro bono on Plaintiff's behalf.

(2) Plaintiff's motions for service of process are denied, (see File Entry #s 4, 12, & 14); however, if, after the case is screened, it appears that this case has merit and states a claim upon which relief may be granted, the Court will order service of process.

DATED this 31ST day of August, 2006.

BY THE COURT:



SAMUEL ALBA
U. S. Chief Magistrate Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

CODY GROUP, L.L.C., a Utah limited
liability company,

Plaintiff,

vs.

RIVERBANK OIL TRANSFER, L.L.C.,

Defendant.

ORDER AND MEMORANDUM DECISION

Case No. 2:05 CV 964 TC

Plaintiff Cody Group, LLC, filed this lawsuit claiming that Defendant Riverbank Oil Transfer, LLC, has improperly refused to pay Cody Group for various services involving the use and movement of rail cars. Riverbank Oil, a Washington LLC domiciled in Riverbank, California, has moved to dismiss the lawsuit, asserting that its contacts with Utah are so minimal that this court cannot properly assert personal jurisdiction over it. In any event, Riverbank Oil claims that this court provides an inappropriate venue for resolution of the parties dispute and that the case should be transferred to California if not dismissed.

After considering the submissions of the parties and the evidence offered at the evidentiary hearing held in this matter, the court concludes that it may properly assert personal jurisdiction over Riverbank Oil. Further, this venue is appropriate and a transfer of this action to

California is unwarranted. Accordingly, the court denies the motion to dismiss.¹

Background

Riverbank Oil is in the business of selling used oil. It accepts used oil at its California facility, transfers that oil into rail cars, and then ships the used oil to various oil processors in the Pacific Northwest. Riverbank Oil's customers then process the used oil and reuse it for various purposes. A critical component of Riverbank Oil's business operation is the rail cars themselves. While some of Riverbank Oil's customers provided their own rail cars, Riverbank Oil also acquired rail cars. It is Riverbank Oil's financing of its rail cars that is at the heart of this lawsuit.

Fairly early on in the establishment of Riverbank Oil's business, discussions between Riverbank Oil and Cody Group occurred and the parties began exploring the possibility of Riverbank Oil renting rail cars from Cody Group. Cody Group is a Utah limited liability company with its principal place of business in Utah. There is a conflict concerning which party initiated contact regarding the proposed agreement. William Newton Cundiff, the operations manager of Riverbank Oil, testified that he was contacted by Robert Elbert, the managing member of Cody Group, and that Mr. Elbert was the first to suggest that Cody Group supply Riverbank Oil with rail cars. In contrast, Mr. Elbert testified that he was contacted by Jack Dahlgren, who identified himself as a principal of Riverbank Oil, and expressed to Mr. Elbert that Riverbank Oil was interested in acquiring rail cars.

¹There are currently two motions to dismiss before the court. Shortly after Riverbank Oil moved to dismiss this action, Cody Group filed an amended complaint. The filing of the amended complaint rendered Riverbank Oil's motion to dismiss moot, as it sought dismissal of superceded complaint. Accordingly, Riverbank Oil filed another motion to dismiss attacking the amended complaint. The arguments raised in the second motion to dismiss are identical to those raised in the first motion to dismiss.

Mr. Elbert also testified that he personally loaned Mr. Dahlgren \$10,000 with the understanding that Mr. Dahlgren would use the money to accelerate the start-up of Riverbank Oil. Specifically, Mr. Elbert understood that the money would be used to secure telephone service, and other necessary services and equipment. In his deposition, Mr. Dahlgren testified that he did receive \$10,000 from Mr. Elbert and that the money was intended to serve as start-up capital for Riverbank Oil. But Mr. Cundiff disputes the characterization of the loan to Mr. Dahlgren. Mr. Cundiff testified that Mr. Dahlgren did provide Riverbank Oil with some capital in exchange for a stake in the company, but that Riverbank Oil was not aware of the source of Mr. Dahlgren's financial contribution.

A short time after the parties first began exploring the possibility of forging a business relationship, Mr. Elbert traveled to Riverside, California, to visit Riverbank Oil's facility. But the parties dispute whether an agreement between the companies had been reached before Mr. Elbert's trip or whether final agreement was reached while Mr. Elbert was in California. Mr. Cundiff asserts that all material terms were negotiated and agreed to while Mr. Elbert was in California. Mr. Elbert testified to his belief that the parties' agreement was already in place by the time he visited the Riverbank Oil facility. Despite the confusion surrounding the initiation of negotiations and the timing of the ultimate consummation of those negotiations, the parties do agree that an agreement was reached.

Because Riverbank Oil was a new company without an established credit record, Cody Group determined that it would have to lease rail cars and then sublease those cars to Riverbank Oil. The testimony indicated that management of rail car movement, as well as adjustments to the number of cars leased by Cody Group to Riverbank Oil, resulted in periodic contact between the two companies. This contact typically took the form of Riverbank Oil contacting Cody

Group to seek adjustment of the number of rail cars and to organize the movement of those rail cars.² Further, to aid its compliance with regulations imposed by the State of California, Riverbank Oil requested that Cody Group provide a bill of lading before a rail car was moved from Riverbank Oil's facility. When a bill of lading was required, Riverbank Oil would contact Cody Group, which would create the bill of lading and then fax a copy to Riverbank Oil.

Over the course of the parties' dealings, which lasted well over a year, Riverbank Oil contacted Cody Group in Utah approximately 150 times. Additionally, Cody Group sent bills of lading and invoices from Utah to California and Riverbank Oil submitted payments on those invoices to Utah. Cody Group filed this lawsuit claiming that Riverbank Oil has failed to pay all money owed under the agreement.

Riverbank Oil submits that its contacts with Utah are too insignificant to allow this court to assert personal jurisdiction over it. Alternatively, Riverbank Oil contends that even if personal jurisdiction is present, this venue is improper because all of the substantial events that gave rise to this lawsuit occurred outside the State of Utah. Finally, Riverbank Oil argues that even if this is an acceptable venue, the court should nevertheless transfer this action to California for the convenience of the parties.

Analysis

I. Personal Jurisdiction

"To obtain personal jurisdiction over a nonresident defendant in a diversity action, a plaintiff must show both that jurisdiction is proper under the laws of the forum state and that the

²Mr. Cundiff and Mr. Dahlgren did travel to Utah during the time period that Riverbank Oil and Cody Group were in business together. The two men met Mr. Elbert in Salt Lake City, Utah, and then drove a rented car to Idaho to explore whether an Idaho company would be interested in purchasing oil. Mr. Cundiff testified that the trip had no relation to Riverbank Oil, but was financed by Hood River Partnership, an entirely different business venture that was interested in brokering oil.

exercise of jurisdiction would not offend due process.” Intercon, Inc. v. Bell Atlantic Internet Solutions, Inc., 205 F.3d 1244, 1247 (10th Cir. 2000). Because Riverbank Oil has contested the jurisdiction of this court, Cody Group has the burden of establishing that jurisdiction is proper. See, e.g., Wenz v. Memery Crystal, 55 F.3d 1503, 1505 (10th Cir. 1995). Cody Group argues that the subject matter of this suit is related to Riverbank Oil’s contacts with this state. Accordingly, it is necessary to determine whether Cody Group has shown that this court can assert specific, rather than general, personal jurisdiction over Riverbank Oil. See Trierweiler v. Croxton & Trench Holding Corp., 90 F.3d 1523, 1532-33 (10th Cir. 1996) (stating that general jurisdiction lies only when a defendant’s contacts with a state are “continuous and systematic,” such that it is not unfair for the state to exercise personal jurisdiction over the defendant even if the suit is unrelated to the defendant’s contacts with the forum state). The appropriate course of inquiry under Utah law is well established:

The evaluation of specific jurisdiction in Utah mandates a three-party inquiry: (1) the defendant’s acts or contacts must implicate Utah under the Utah long-arm statute; (2) a “nexus” must exist between the plaintiff’s claims and the defendant’s acts or contacts; and (3) application of the Utah long-arm statute must satisfy the requirements of federal due process.

Soma Med. Int’l v. Std. Chtd. Bank, 196 F.3d 1292, 1297 (10th Cir. 1999) (internal quotation omitted). Riverbank Oil contends that the claims in this suit do not implicate Utah’s long-arm statute and that assertion of personal jurisdiction over it would violate federal due process.

The Utah State Legislature has expressed its intent “to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution.” Utah Code Ann. § 78-27-22. The Utah Supreme Court has upheld that policy. SII MegaDiamond, Inc. v. Am. Superabrasives Corp., 969 P.2d 430, 433 (Utah 1998). Given the broad interpretation to be given to Utah’s long-arm statute, “[i]t

is frequently helpful to undertake the due process analysis first, because any set of circumstances that satisfies due process will also satisfy the long-arm statute.” Systems Designs, Inc. v. New Customware Co., Inc., 248 F. Supp. 2d 1093, 1097 (D. Utah 2003) (citing SII MegaDiamond, 969 P.2d at 433; Soma Med. Int’l v. Standard Chartered Bank, 196 F.3d 1292, 1298 (10th Cir. 1999); Far West Capital, Inc. v. Towne, 46 F.3d 1071, 1075 (10th Cir. 1995)).

The Due Process Clause of the Fourteenth Amendment permits a federal court sitting in diversity “[to] exercise personal jurisdiction over a nonresident defendant only so long as there exist ‘minimum contacts’ between the defendant and the forum state.” World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291 (quoting Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). “The sufficiency of a defendant’s contacts must be evaluated by examining the defendant’s conduct and the connections with the forum state to assess whether the defendant has ‘purposefully avail[ed] itself of the privilege of conducting activities within the forum State.’” First City Bank, N.A. v. Air Capitol Aircraft Sales, Inc., 820 F.2d 1127, 1130-31 (10th Cir. 1987) (brackets in original) (quoting Hanson v. Denckla, 357 U.S. 235, 237 (1958)).

While Riverbank Oil concedes that it did have contacts with Cody Group, it asserts that “[a]ny contacts that Riverbank Oil may have had with the State of Utah were random, fortuitous and attenuated.” (Reply Memo. in Supp. of Mot. to Dismiss 7 (dkt. #7).) The evidentiary record does not support Riverbank Oil’s assertion.

Presumably, Riverbank Oil is endeavoring to equate the present case with STV International Marketing v. Cannondale Corp., 750 F. Supp. 1070 (D. Utah 1990). In STV, the court concluded that it could not assert jurisdiction over the defendant even though the defendant entered into a marketing agreement with a Utah corporation. Id. at 1071, 1078. The court acknowledged that the defendant had made phone calls to Utah and on two occasions discussed

the parties' business arrangement while in Utah for other purposes. Id. at 1071-72. Riverbank Oil claims that its contacts with Utah are similar to those of the defendant in STV. It bolsters this assertion by citing to Rambo v. American Souther Insurance Co., 839 F.2d 1415 (10th Cir. 1988), for the proposition that "[t]he existence of letters or telephone calls to the forum state related to the plaintiff's action will not necessarily meet due process standards." Id. at 1418.

Riverbank Oil's argument fails to take account of the nature of its contacts with Utah. As the Tenth Circuit stated in Rambo, "[c]ertainly, telephone calls and letters may provide sufficient contacts for the exercise of personal jurisdiction." Id. The Tenth Circuit went on to clarify that "[t]he proper focus for analyzing these contacts is whether they represent an effort by the defendant to 'purposefully avail[] itself of the privilege of conducting activities within the forum State.'" Id. at 1419 (quoting Hanson, 357 U.S. at 253).

It is the nature of the contacts, not the manner in which the contacts were made, that distinguishes this case from STV. In STV, the court concluded that the dispute between the parties did not directly implicate Utah in any meaningful manner. See 750 F. Supp. at 1078. The defendant in STV argued that the parties dispute was, in substance, "an entirely Europe/Connecticut transaction, and that contact with Utah were not only relatively minuscule in quantity, but were tangential to the parties' relationship." Id. The court agreed, stating that "[t]he 'economic realities' in the case at bar are such that the defendant has very few economic ties with the State of Utah." Id.

_____ The economic realities of this case are different. Riverbank Oil's assertion that the parties' present dispute is a California transaction, only tangentially involving Utah, is simply contradicted by the record. Rather, two companies, one in Utah and one in California, engaged in continuous and systematic contact for well over a year. The parties exchanged information,

coordinated business activities, submitted and received invoices, and Riverbank Oil submitted payments to Cody Group in Utah. The contacts with Utah were directly aimed at furthering the business relationship between the two parties.

Viewed in their totality, the facts of this case indicate that Riverbank Oil purposefully established substantial contacts with Utah. By taking those steps, Riverbank Oil was on notice that any potential conflict between the parties arising from their business dealings might end up in front of a Utah tribunal. See Pro Axess, Inc. v. Orlux Dist., Inc., 428 F.3d 1270, 1277-78 (10th Cir. 2005) (holding that totality of facts supported finding of purposeful availment when a French corporation contacted a Utah corporation and entered into a contract with that corporation, services were performed in Utah, and the parties exchanged “numerous faxes, letters, and phone calls.”); Cf. SII Megadiamond, Inc. v. Am. Superabrasives Corp., 969 P.2d 430, 435-36 (Utah 1996) (“Any nonresident business that confirms that it intends to act as a national and international distributor for a Utah business and then places hundreds of purchase orders for goods that are to be shipped and invoiced from Utah, with full knowledge that it must perform its part of the bargain by paying for the goods in Utah[,] should not be surprised when it gets haled into court after it fails to pay no fewer than 170 invoices.” (internal quotation omitted)).

Even if a defendant’s actions satisfy the minimum contacts test, however, a court must still consider whether “the exercise of personal jurisdiction over defendant would offend traditional notions of ‘fair play and substantial justice.’” Intercon, 205 F.3d at 1247 (internal citations omitted). The Tenth Circuit has identified the following five factors to consider when determining whether notions of fair play and substantial justice will be offended by the exercise of personal jurisdiction:

(1) the burden on the defendant, (2) the forum state's interest in resolving the dispute, (3) the plaintiff's interest in receiving convenient and effective relief, (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversies, and (5) the shared interest of the several states in furthering fundamental social policies.

Pro Axess, 428 F.3d at 1279-80 (internal quotation omitted). “[W]here a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.” Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985).

Riverbank Oil has presented no persuasive evidence or argument to indicate that notions of fair play would be violated by allowing Cody Group to pursue its claims in Utah. The court notes that Cody Group is seeking damages in excess of \$100,000.00. In upholding the exercise of personal jurisdiction in SII Megadiamond, the court noted that “[w]here the amount in controversy . . . is substantive compared to the costs of litigating the action, there is only minimal possibility of defendants defaulting on the basis that they cannot afford to litigate in the forum.” 969 P.2d at 436 (internal quotation omitted). In that case, the plaintiff was seeking \$118,000.00 in damages. Id. Further, “[s]tates have an important interest in providing a forum in which their residents can seek redress for injuries caused by out-of-state actors.” Pro Axess, 428 F.3d at 1280 (internal quotation and citation omitted).

The court concludes that consideration of the first two factors identified in Pro Axess lend support to the conclusion that allowing Cody Group to prosecute its claims in Utah will not violate notions of fair play and substantial justice. The additional Pro Axess factors either minimally support this forum's retention of this matter or do not materially favor one party more than another. But when all five factors are considered, the court is convinced that notions of fair

play and substantial justice will not be offended by exercising personal jurisdiction over Riverbank Oil.

II. Improper Venue

Riverbank Oil claims that even if this court can assert personal jurisdiction over it, this court is nevertheless an improper venue for the resolution of the parties' dispute. The United States Code provides that a diversity suit may be heard in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(a).

Riverbank Oil argues that "all substantial alleged events or omissions giving rise to this lawsuit occurred outside of Utah." (Memo. in Supp. of Mot. to Dismiss 8 (dkt. #3).) As just discussed, Riverbank Oil's assertion does not comport with the evidence. Both parties actively participated in the business relationship and a large number of events in relation to the parties' business relationship unfolded in Utah. Accordingly, venue is appropriate in this court under 28 U.S.C. § 1391(a).

III. Transfer

Riverbank Oil's final argument is that this case should be transferred to California as a matter of convenience. The United States Code states that "[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). When deciding whether to transfer an action, several factors must be considered.

First, the plaintiff's choice of forum. Second, the access of witnesses, including the availability of compulsory process to insure attendance of witnesses, as well as other sources of evidence. Third, the cost associated with presenting the required evidence in the case. Fourth, the enforceability of a judgment if one is obtained. Fifth, the relative advantages and obstacles to a fair trial. Sixth, any

difficulties that may arise from congested dockets. Seventh, the possibility of the existence of issues arising in the area of conflict of laws. Eighth, the advantage of having a local court determine questions of local law. And, ninth, all other considerations of a particular nature that make a trial easy, expeditious and economical.

Star Stone Quarries, Inc. v. Garland, 300 F. Supp. 2d 1177, 1182 (D. Utah 2003) (citing Chrysler Credit Corp. v. Country Chrysler, Inc., 928 F.2d 1509, 1516 (10th Cir. 1991); Recovery Processes v. Hoechst Celanese Corp., 857 F. Supp. 863, 866 (D. Utah 1994)).

Consideration of the above factors does not support a transfer of this action: (1) Cody Group chose this forum to litigate its dispute; (2) it is apparent from the filings of the parties that a substantial amount of evidence, both witnesses and documents, is present in both Utah and California, making it of near-equal inconvenience to litigate this dispute in California; (3) the nature of the claims indicates that the cost of presenting evidence will be approximately the same in either state. Additional considerations do not weigh heavily in favor of one forum over another. For example, it remains undetermined whether Utah or California law will apply, and there is no indication of a potential conflict of laws issue in any event. Accordingly, the court declines Riverbank Oil's request that this matter be transferred to California.

Conclusion

The evidence establishes that Riverbank Oil purposefully availed itself of Utah and maintained substantial, systematic contacts with Utah. Requiring Riverbank Oil to defend itself in a Utah court will not offend traditional notions of fair play. Further, venue is proper in this court because a substantial amount of the events leading to this litigation occurred in Utah. Finally, a transfer of this case to California is not warranted under the circumstances. Therefore, Riverbank Oil's Motion to Dismiss and Request for Oral Argument (dkt. #2) is DENIED as moot, and Riverbank Oil's Motion to Dismiss First Amended Complaint (dkt. #8) is DENIED.

DATED this 6th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge

UNITED STATES DISTRICT COURT

Central

District of

Utah

FILED
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

V.

Lawrence Kim Ogden

JUDGMENT IN A CRIMINAL CASE - 1 A 11:12

Case Number: DUTX 2:06CR000033-001

USM Number: 07345-081

Benjamin Hamilton

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 2113(a)	Bank Robbery		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/28/2006

Date of Imposition of Judgment

Tena Campbell

Signature of Judge

Tena Campbell

Name of Judge

U.S. District Court Judge

Title of Judge

8-31-2006

Date

DEFENDANT: Lawrence Kim Ogden
CASE NUMBER: DUTX 2:06CR000033-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

118 Months

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends to the BOP that the defendant serve his sentence at a medical facility, where his mental and physical disabilities can be attended to.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Lawrence Kim Ogden
CASE NUMBER: DUTX 2:06CR000033-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Lawrence Kim Ogden
CASE NUMBER: DUTX 2:06CR000033-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug testing as directed by the probation office.
2. The defendant shall participate in drug abuse treatment under a copayment plan as directed by the United States Probation Office.

DEFENDANT: Lawrence Kim Ogden
CASE NUMBER: DUTX 2:06CR000033-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$ 2,640.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Zions Bank			
Attn: Corporate Security			
1340 South Foothill Drive			
Salt Lake City, UT 84108	\$2,640.00	\$2,640.00	100%

TOTALS	\$ <u>2,640.00</u>	\$ <u>2,640.00</u>
--------	--------------------	--------------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Lawrence Kim Ogden
CASE NUMBER: DUTX 2:06CR000033-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☒ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☒ Payment in equal monthly (e.g., weekly, monthly, quarterly) installments of \$ 10.00 over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:
SPA of \$100 shall be due and payable immediately;
Restitution of \$2640.00 is due immediately and shall be payable at a minimum rate of \$10.00 per month upon release from incarceration.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 4 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

Central

District of

Utah **FILED**
DISTRICT COURT

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

2006 SEP -1 A 11:10

V.

Royce Merlyn Rodgers

Case Number: DUTX 2:06CR000078-001

USM Number: 13269-081

CLERK
DEPUTY CLERK

Ed Brass

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) of the Felony Information

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 2425	Use of Interstate Facility to Transport Information About a Minor		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/29/2006

Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell

Name of Judge

U.S. District Court Judge

Title of Judge

8-31-2006

Date

DEFENDANT: Royce Merlyn Rodgers
CASE NUMBER: DUTX 2:06CR000078-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

23 Months

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends to the BOP that the defendant receive Sex Offender Treatment.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on 9/26/2006

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Royce Merlyn Rodgers
CASE NUMBER: DUTX 2:06CR000078-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☒ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Royce Merlyn Rodgers
CASE NUMBER: DUTX 2:06CR000078-001

SPECIAL CONDITIONS OF SUPERVISION

1. The Court orders the presentence report may be released to the state sex offender registration agency if required for purposes of sex offender registration.
2. The defendant shall participate in mental health and/or sex-offender treatment program as directed by the USPO.
3. The defendant is restricted from visitation with individuals who are under 18 years of age without adult supervision as approved by the USPO.
4. The defendant shall abide by the following occupational restrictions: Any employment shall be approved by the probation office. In addition, if 3rd party risks are identified, the probation office is authorized to inform the defendant's employer of his supervision status.
5. The defendant shall not possess or use a computer with access to any on-line computer service without prior written approval of the Court. This includes any Internet service provider, bulletin board system, or any other public or private computer network. Any approval by the Court shall be subject to the conditions set by the Court or the probation office.
6. The defendant shall not view or otherwise access pornography in any format.

DEFENDANT: Royce Merlyn Rodgers
 CASE NUMBER: DUTX 2:06CR000078-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
---------------	----------------	----------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Royce Merlyn Rodgers
CASE NUMBER: DUTX 2:06CR000078-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

CENTRAL DIVISION

District of

FILED
U.S. DISTRICT COURT
UTAH

UNITED STATES OF AMERICA

V.

JAVIER LOPEZ-MENDEZ

JUDGMENT IN A CRIMINAL CASE

2006 SEP 1 A 9:48

DISTRICT OF UTAH

Case Number: DUTX 206CR000260-001

USM Number: 13571081

DEPUTY CLERK

Carlos Garcia

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. § 1326	Reentry of a Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/5/2006

Date of Imposition of Judgment

Signature of Judge

Ted Stewart

Name of Judge

United States District

Title of Judge

9/6/2006

Date

DEFENDANT: JAVIER LOPEZ-MENDEZ

CASE NUMBER: DUTX 206CR000260

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

24 months

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JAVIER LOPEZ-MENDEZ
CASE NUMBER: DUTX 206CR000260

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JAVIER LOPEZ-MENDEZ
CASE NUMBER: DUTX 206CR000260

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant shall not re-enter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: JAVIER LOPEZ-MENDEZ

CASE NUMBER: DUTX 206CR000260

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
--------	----------------	----------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JAVIER LOPEZ-MENDEZ
CASE NUMBER: DUTX 206CR000260

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

Central

District of

Utah U.S. DISTRICT COURT

UNITED STATES OF AMERICA

V.

Billy Jo Gardner

JUDGMENT IN A CRIMINAL CASE

2006 SEP -1 A 11:10

Case Number: DUTX 2:06CR000266-001

USM Number: 13581-081

DISTRICT OF UTAH

BY: DEPUTY CLERK

Robert Steele

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 3 and 4 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 1344	Bank Fraud		3
18 USC § 1028A	Aggravated Identity Theft		4

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 1 and 2 of the Indictment ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/30/2006

Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell

Name of Judge

U.S. District Court Judge

Title of Judge

8-31-2006

Date

DEFENDANT: Billy Jo Gardner
CASE NUMBER: DUTX.2:06CR000266-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

39 Months - 15 Months as to Count 3
24 Months as to Count 4

☐ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends to the BOP that the defendant serve his sentence at FCI Oxford, Wisconsin and receive vocational training in HVAC and culinary art areas. The Court also recommends the defendant participate in the RDAP treatment program, while incarcerated.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Billy Jo Gardner
CASE NUMBER: DUTX 2:06CR000266-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Billy Jo Gardner

CASE NUMBER: DUTX 2:06CR000266-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless he is in compliance with the established payment schedule and obtains the approval of the USPO.
2. The defendant shall provide the probation officer access to all requested financial information.
3. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing.
4. The defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan, as directed by the USPO.
5. The defendant shall submit his person, residence, office or vehicle to a search, conducted by a USPO at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Billy Jo Gardner
 CASE NUMBER: DUTX 2:06CR000266-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$	\$ 5,407.90

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Cypress Credit Union			
P.O. Box 326			
Magna, UT 84044	\$118.22	\$118.22	
Mountain America Federal Credit Union			
7181 South Campus View Drive			
West Jordan, UT 84084	\$5,289.68	\$5,289.68	

TOTALS	\$ <u>5,407.90</u>	\$ <u>5,407.90</u>
---------------	--------------------	--------------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Billy Jo Gardner
CASE NUMBER: DUTX 2:06CR000266-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 200.00 due immediately, balance due
☐ not later than _____, or
☒ in accordance ☐ C, ☒ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☒ Payment in equal monthly (e.g., weekly, monthly, quarterly) installments of \$ 100.00 over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:
SPA of \$200 is due immediately;
Restitution of \$5,407.90 is due immediately, and shall be payable at a minimum rate of \$100 per month upon release from incarceration.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 1 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED
U.S. DISTRICT COURT

RECEIVED

2006 SEP -5 P 3: 53 SEP 05 2006

DISTRICT OF UTAH
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION
OFFICE OF
JUDGE TENA CAMPBELL

UNITED STATES OF AMERICA,	:	ORDER FOR A COMPETENCY
	:	HEARING AND MENTAL HEALTH
Plaintiff,	:	EVALUATION PURSUANT TO 18
	:	U.S.C. § 4142(a)
vs.	:	
MILTON EDGAR HANSEN SR.,	:	Case No. 2:06CR299
	:	
Defendant.	:	Honorable Tena Campbell

Based on motion of the Defendant, Milton Edgar Hansen Sr., stipulation of the parties and good cause shown;

IT IS HEREBY ORDERED that the Defendant's motion for a competency hearing and mental health evaluation and report is granted.

IT IS FURTHER ORDERED:

1. The Defendant is hereby committed to the custody of the United States Marshal for transportation to a suitable federal facility for a psychiatric or psychological evaluation in accordance with 18 U.S.C. § 4247(b).
2. The examiner shall prepare and file with this Court a report in accordance with 18 U.S.C. § 4247(c), and provide copies to:

Kristen R. Angelos
Attorney for Milton Hansen
46 West Broadway, Suite 110
Salt Lake City, Utah 84101
Telephone: (801) 524-4010
Facsimile: (801) 524-4060

Lana Taylor
Special Assistant United States Attorney
348 E. South Temple
Salt Lake City, Utah 84111
Telephone: (801) 524-4156
Facsimile: (801) 524-5803


3. Said report shall be completed within a reasonable period, not to exceed thirty (30) days. The examiner may request a reasonable extension, not to exceed fifteen (15) days, upon a showing that additional time is necessary to observe and evaluate the defendant.

4. Upon completion of said report, the Defendant shall be transported back to the District of Utah forthwith, for a competency hearing.

5. The trial date is stricken, and the time between October 2, 2006 and the competency hearing is excluded pursuant to 18 U.S.C. § 3161(h)(1)(A).

DATED this 5 day of September, 2006.

BY THE COURT:


HONORABLE TENA CAMPBELL
United States District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

THE UNITED STATES OF AMERICA, Plaintiff, vs. MILENKO STJEPANOVIC, Defendant.	ORDER GRANTING DEFENDANT'S MOTION TO CONTINUE, EXCLUDING TIME AND SETTING DATE FOR CHANGE OF PLEA Case No. 2:06-CR-348 TS
--	--

Defendant moves to continue trial due to the difficulty in obtaining necessary translation services and the difficulty in obtaining discovery where some alleged events occurred in another country. The government has no objection. The parties request a setting for an anticipated change of plea.

The court finds that the difficulty in arranging Serbian interpretation, the difficult logistical matters involved in discovery that must be obtained from another country that the failure to continue trial would deny counsel for Defendant the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. The Court further finds that the ends of justice served by extending the time in this matter outweigh

the interest of the public and Defendant in a Speedy Trial. It is therefore

ORDERED that Defendant's Motion to Continue Pretrial Conference and Jury Trial Reset the Matter for Change of Plea (Docket No. 20) is GRANTED. It is further


ORDERED that the final pretrial conference set for September 6, 2006 at 3:30 p.m. and the jury trial set to begin on September 13, 2006, at 8:30 a.m. are VACATED. It is further

ORDERED that a change of plea hearing is set for October 30, 2006 @ 3:30 p.m. It is further

ORDERED that pursuant to 18 U.S.C. § 3161(H)(8), the time from September 6, 2006, through the date of the new change of plea hearing is excluded from the computation of the time within which the trial must commence pursuant to the Speedy Trial Act.

DATED September 6, 2006.

BY THE COURT:



TED STEWART
United States District Judge

JEREMY M. DELICINO - 9959
Attorney for Defendant
10 West Broadway, Suite 650
Salt Lake City, Utah 84101
Telephone: (801) 364-6474
Facsimile: (801) 364-5014

RECEIVED
FILED
U.S. DISTRICT COURT
AUG 31 2006
2006 SEP -1 A 11:00
OFFICE OF
JUDGE TENA CAMPBELL
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALFREDO VIVANCO,

Defendant.

:

:

:

:

:

FINDINGS AND ORDER

Case No. 2:06-CR-453 TC

Based on motion of the defendant and stipulation of the plaintiff, the court enters the following;

FINDINGS

1. If defendant's motion to continue were denied it would deny the defendant continuity of counsel.
2. Counsel needs additional time to effectively prepare for trial and consult with the defendant.
3. Counsel has exercised due diligence in preparing this case.
4. The ends of justice in granting a continuance outweigh the best interests of the public and the defendant in a speedy trial.

ORDER

It is hereby ORDERED that the trial date of September 11, 2006, be stricken and the trial continued.

It is further, ORDERED that the time between September 11, 2006, and ~~the next trial date~~ ^{10/30/2006 @ 830am} be excluded from the computation for the time for trial as described in 18 U.S.C. §3161.

DATED this 31 day of August, 2006.

BY THE COURT:


HONORABLE TENA CAMPBELL
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

Roberto G. Culas (E-Filer)
rculas@culaslaw.com

Vernon G. Stejskal (E-Filer)
mrumph@utah.gov dwink@dea.state.ut.us

/s/ Brittany Bagley

FILED

CLERK, U.S. DISTRICT COURT

August 31, 2006 (9:03am)

DISTRICT OF UTAH

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

V.

ORDER SETTING CONDITIONS OF RELEASE

STEVEN C. WARD

Case Number: 2:06-CR-538 JTG

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

PLACE

on _____

DATE AND TIME

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- () (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

dollars (\$)

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- () (6) The defendant is placed in the custody of:
(Name of person or organization)
(Address)
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____

Custodian or Proxy

(✓)(7) The defendant shall:

- (✓)(a) maintain or actively seek employment.
- () (b) maintain or commence an educational program.
- (✓)(c) abide by the following restrictions on his personal associations, place of abode, or travel:
maintain residence at the address reported to PTS. No change without prior permission of PTS.
- () (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
- (✓)(e) report on a regular basis to the supervising officer as directed.
- () (f) comply with the following curfew:
- (✓)(g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
- () (h) refrain from excessive use of alcohol.
- (✓)(i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
- () (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
- () (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
- () (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
- () (m) execute a bail bond with solvent sureties in the amount of \$
- () (n) return to custody each (week)day as of _____ o'clock after being released each (week)day as of _____ o'clock for employment, schooling or the following limited purpose(s):
- () (o) surrender any passport to
- () (p) obtain no passport
- (✓)(q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
- () (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
- () (s) submit to an electronic monitoring program as directed by the supervising officer.
- (✓)(t) no travel outside the State of Utah without prior permission of PTS. No travel outside the United States without leave of the Court.

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.



Signature of Defendant

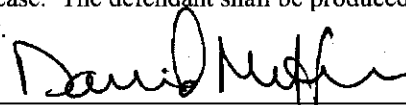
Address

City and State

Telephone

Directions to the United States Marshal

- (☒) The defendant is ORDERED released after processing.
- () The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: August 31, 2006

Signature of Judicial Officer

Magistrate Judge David Nuffer

Name and Title of Judicial Officer

FILED
U.S. DISTRICT COURT

BRETT L. TOLMAN, United States Attorney (#8821)
D. LOREN WASHBURN, Assistant United States Attorney (#10993)
MICHAEL P. KENNEDY, Assistant United States Attorney (#8759)
Attorneys for the United States of America
185 South State Street, #400
Salt Lake City, Utah 84111
Telephone: (801) 524-5682
Facsimile: (801) 524-6925
e-mail: loren.washburn@usdoj.gov

2006 SEP -5 P 2: 31

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Case No:	2:06CR00554 JTG
Plaintiff,	:		
vs.	:		
	:	SCHEDULING ORDER	
STEVEN C. CHRISTENSEN	:		
and	:		
DIANE C. CHRISTENSEN,	:		
Defendants.	:		

On August 24, 2006, a scheduling conference was held in the above-captioned matter before Judge J. Thomas Greene. Both defendants were represented by their counsel of record; the United States was represented by Assistant United States Attorney, D. Loren Washburn.

Defendant Steven Christensen moved to withdraw his pending motion to review the magistrate judge's Order of Detention.

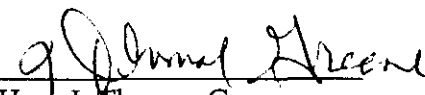
The trial in this matter has been scheduled for October 24, 2006 at 10:00 am. The final pretrial conference shall be held on October 13, 2006 at 10:00 am.

It is ORDERED that, the Defendants shall remain detained pursuant to the order issued by the Magistrate Judge Samuel Alba.

It is further ORDERED that, all pretrial motions be filed by September 22, 2006. A hard copy of any such motions shall be delivered to Judge Greene's chambers by noon on September 22, 2006.

It is further ORDERED that, the parties shall file stipulated jury instructions, proposed voir dire, and a form of verdict by noon on October 12, 2006, with hard copy delivered to chambers unless it is stipulated by counsel that a change of plea or other basic matter is to be raised at the pretrial conference set for October 13, 2006 at 10:00 a.m.

DATED this 5th day of September, 2006.


Hon. J. Thomas Greene
United States District Judge

United States District Court

CENTRAL DISTRICT OF UTAH

FILED IN UNITED STATES DISTRICT
COURT DISTRICT OF UTAH

UNITED STATES OF AMERICA
V.

SEP 06 2006
B. ZIMMER, Clerk
DEPUTY CLERK
~~AMENDED ORDER SETTING~~
CONDITIONS OF RELEASE

Larry Jensen

Case Number: 2:06cr603JTG

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant shall next appear at (if blank, to be notified)

PLACE

on

DATE AND TIME

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- () (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

dollars (\$)

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- () (6) The defendant is placed in the custody of:
(Name of person or organization)
(Address)
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____

Custodian or Proxy

- (X) (7) The defendant shall:
- (X) (a) maintain or actively seek employment.
 - () (b) maintain or commence an educational program.
 - () (c) abide by the following restrictions on his personal associations, place of abode, or travel:
 - () (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
 - (X) (e) report on a regular basis to the supervising officer as directed.
 - () (f) comply with the following curfew:
 - (X) (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
 - () (h) refrain from excessive use of alcohol.
 - () (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
 - () (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
 - () (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
 - () (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
 - () (m) execute a bail bond with solvent sureties in the amount of \$
 - () (n) return to custody each (week)day as of _____ o'clock after being released each (week)day as of _____ o'clock for employment, schooling or the following limited purpose(s):
 - (X) (o) surrender any passport to Clerk of Court within 72 hours
 - () (p) obtain no passport
 - () (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
 - () (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
 - () (s) submit to an electronic monitoring program as directed by the supervising officer.
 - (X) (t) dft is to maintain residence in Price, UT with his parents unless he has permission from USPO
 - (X) (u) Dft is to not reside with any former or current employees of CCC
 - (X) (v) Dft is to not have contact with any victims/witness/employees of CCC
 - (X) (w) Dft is to not travel outside the state of UT unless dft has permission
 - (X) (x) Seek mental health treatment

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

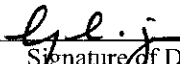
If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

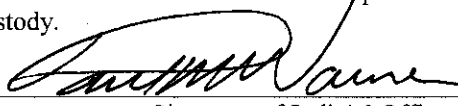
A term of imprisonment imposed for failure to appear or surrender shall be in additions to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.


Signature of Defendant_____
Address_____
City and State_____
Telephone**Directions to the United States Marshal**

- (☒) The defendant is ORDERED released after processing.
- () The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: 6 Sept 2006
Signature of Judicial OfficerMagistrate Judge Paul M. Warner

Name and Title of Judicial Officer

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

V.

ORDER SETTING CONDITIONS OF RELEASE

William Appawora

Case Number: 2:06cr604 DS

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

PLACE

on

DATE AND TIME

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- () (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

dollars (\$)

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- () (6) The defendant is placed in the custody of:
(Name of person or organization)
(Address)
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____
Custodian or Proxy

- (X) (7) The defendant shall:
- (X) (a) maintain or actively seek employment.
 - () (b) maintain or commence an educational program.
 - () (c) abide by the following restrictions on his personal associations, place of abode, or travel:
 - () (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
 - (X) (e) report on a regular basis to the supervising officer as directed.
 - () (f) comply with the following curfew:
 - (X) (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
 - (X) (h) refrain from excessive use of alcohol.
 - () (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
 - () (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
 - () (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
 - () (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
 - () (m) execute a bail bond with solvent sureties in the amount of \$
 - () (n) return to custody each (week)day as of _____ o'clock after being released each (week)day as of _____ o'clock for employment, schooling or the following limited purpose(s):
 - () (o) surrender any passport
 - () (p) obtain no passport
 - () (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
 - () (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
 - () (s) submit to an electronic monitoring program as directed by the supervising officer.
 - (X) (t) stay is to maintain residence at apartment in SLC unless he has permission from USPO
 - (X) (u) Random breathalyzer testing by USPO

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

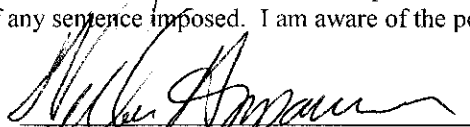
If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in additions to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

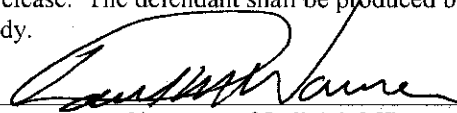
Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.



Signature of Defendant_____
Address_____
City and State_____
Telephone**Directions to the United States Marshal**

- (☒) The defendant is ORDERED released after processing.
- () The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: 6 Sept 2006

Signature of Judicial Officer**Magistrate Judge Paul M. Warner**_____
Name and Title of Judicial Officer

FILED
U.S. DISTRICT COURT

2006 SEP -6 A 10: 21

**In the United States District Court
for the District of Utah, Central Division**

DISTRICT OF UTAH

BY: DEPUTY CLERK

NORTHERN UTAH HEALTHCARE CORP.
dba ST. MARK'S HOSPITAL,

Plaintiff,

vs.

BC LIFE & HEALTH INSURANCE
COMPANY,

Defendant.

**MEMORANDUM DECISION AND
ORDER**

Case No. 2:06 cv 077 JTG

This matter comes before the Court on plaintiff's Motion for Remand to State Court. The parties have submitted memoranda, supplemental memoranda, and oral argument has been heard. The parties submitted the matter for decision and the motion was taken under advisement.

The Court has reviewed the entire record, and after due consideration, Plaintiff's Motion for Remand is GRANTED.

PROCEDURAL HISTORY

Northern Utah Healthcare ("Northern") filed a Complaint in the Third District Court for the State of Utah against BC Life and Health Insurance Company ("BC") listing three causes of action: (1) breach of contract; (2) promissory estoppel; and (3) negligent misrepresentation. BC filed a timely Notice of Removal, removing the case from the State of Utah to the United States District Court for the District of Utah. BC initiated removal based on

its contention that the federal courts had original jurisdiction of the enumerated claims under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1001 et. seq.

Northern filed a timely Motion for Remand and Memorandum in Support.

Northern argues that BC's removal, based on federal question jurisdiction under ERISA, is defective because BC's claims raise no issues of federal law and are not subject to ERISA preemption. BC then filed a Memorandum in Opposition to the Motion to Remand and Northern filed a Reply. Thereafter, the Court set the Motion to Remand for oral argument. The motion was fully argued, the parties submitted the matter for decision, and the Motion for Remand was taken under advisement.

FACTUAL HISTORY

In 2004, Jason McBride ("McBride") was employed at Wal Mart and was eligible to receive benefits under the Wal-Mart Stores, Inc. Associates' Health and Welfare Plan (the "Plan"). During the Spring of that year, McBride was experiencing serious medical problems and went to St. Mark's Hospital to arrange for medical treatment. On and after June 15, 2004, several St. Mark's representatives called BC to inquire whether McBride was eligible for benefits under the Plan. In response, a BC customer service representative told the St. Marks representative that McBride was eligible for benefits under the Plan, but that the Plan provided a first year maximum coverage benefit of \$25,000. On June 25, 2004, Dr. J. Kent Thorne's office called BC to request authorization to perform an elective surgery for McBride intended to treat an Aortic Valve disorder. BC approved the surgery under their Plan, and surgery was then

scheduled for August 6th-10th, 2004. Subsequent phone calls were made by St. Mark's representatives to BC to confirm that the surgery and related expenses would be covered by the Plan.

St. Mark's contends that the aforementioned phone calls led them to believe that all qualifying expenses would be paid because McBride's out-of-pocket and deductible obligations were believed to have been met. However, under McBride's insurance coverage he was entitled to qualifying expenses up to 100% "of the Plan's maximum benefit," which was \$25,000. St. Mark's final call to BC was made on August 5, 2004, at which time St. Mark's alleges that it was again assured by BC that the Plan would cover all costs of treatment.

The elective surgery was received by McBride as scheduled, after which St. Mark's submitted three claims for benefits to BC and BC paid \$3,789.97 on the first claim and \$10,232.45 on the second claim. However, St. Mark's third claim of \$43,369.49 was not paid because McBride's benefit cap had been exceeded at that point. After BC refused to pay the final \$43,369.49, Northern dba St. Mark's, brought suit in State Court.

I. ERISA'S PREEMPTIVE PROVISION DOES NOT REACH THIRD-PARTY HEALTH CARE PROVIDERS.

The essential issue to be decided in Northern's Motion to Remand is whether its claims 'relate to' an employee benefit plan under ERISA. If the claims do 'relate to' an employee benefit plan, ERISA preemption would defeat the Motion to Remand. If the claims do not so 'relate to,' the Motion to Remand should be granted.

The Supreme Court has enunciated the rule as follows: "ERISA shall supersede any and all State laws insofar as they relate to any employee benefit plan covered by the statute,

29 U.S.C. § 1144(a).” *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 650, 115 S.Ct. 1671, 1674 (quotations and citation omitted) (emphasis added). In *Shaw v. Delta Air Lines, Inc.*, the Supreme Court recognized a narrow exception to ERISA preemption:

Some state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law ‘relates to’ the plan.

463 U.S. 85, 100 (1983).

In order to warrant a finding that an employee benefit plan does not ‘relate to’ ERISA, courts have ruled that ERISA’s broad preemptive scope does not reach independent claims based on state-common law. In this regard, the Fifth, Ninth and Eleventh Circuits permit third-party health care providers to bring such independent claims: *Lordmann Enterprises, Inc. v. Equicor, Inc.*, 32 F.3d 1529, 1533 (11th Cir. 1994); *Cypress Fairbanks Medical Center, Inc. v. Pan-American Life Ins. Co.*, 110 F.3d 280, 283 (5th Cir. 1997); *Meadows v. Employers Health Insurance*, 47 F.3d 1006, 1008 (Ninth Cir. 1995). These courts have determined that a third-party health care provider, who relies to its detriment on the misrepresentations of an insurer, is an outside party to an ERISA plan.

The Tenth Circuit also recognized the aforesaid narrow exception to ERISA preemption in *Hospice of Metro Denver, Inc. v. Group Health Ins. of Oklahoma, Inc.*, 944 F.2d 752, 756 (10th Cir. 1991). In *Hospice*, the infant son of an employee with Blue Cross group health care benefits was admitted to Hospice’s healthcare facility (“HC facility”) to receive around-the-clock care following a surgery. The HC facility contacted Blue Cross about insurance coverage, prior to admitting the infant, and was informed that coverage was available. The HC

facility repeatedly contacted Blue Cross throughout the child's care and was assured that care was covered. However, following the infant's discharge, Blue Cross denied coverage. The HC facility sued in state court alleging promissory estoppel, quantum merit, and claims as a third-party beneficiary. Blue Cross removed the action to federal court, and the district court denied a motion for remand holding that the HC facility's first two claims were preempted under ERISA. The court found Hospice's reference in the complaint to the ERISA plan did not 'relate to' the plan, stating that Blue Cross's denial of payment to Hospice was a consequence of its denial of coverage to the employee. The court determined that the HC provider's claims did not relate to rights under the plan where there was no claim against the plan contract. Finally, the court determined that simply because damages would be based upon the amount of potential plan benefits, that did not implicate the administration of the plan, and was not consequential enough to connect the action with, or relate the action to, the plan. *Id.* at 755. In reversing the district court, the court remanded the case, finding that:

An action brought by a health care provider to recover promised payment from an insurance carrier is distinct from an action brought by a plan participant against the insurer seeking recovery of benefits due under the terms of the insurance plan.

Id.

As was the case in *Hospice*, Northern in this case does not claim any rights under the plan and instead is requesting independent damages as a third-party. BC has attempted to distinguish *Hospice* based on the idea that the benefits in *Hospice* were never covered under the plan, whereas in this case, some benefits were actually paid to Northern. In support of this distinction, BC has cited to *Via Christi Regional Medical Center v. Blue Cross and Blue Shield*

of Kansas, 361 F.Supp.2d 1280 (D. Kansas 2005).¹ In *Via Christi*, a beneficiary of a qualifying ERISA plan assigned his rights to Via Christi, a third-party healthcare provider. Although at the onset of treatment the plan was self insured and had a stop loss policy with the defendant, it subsequently switched to a fully insured plan without the stop loss policy. Because of the excessive medical costs incurred by the beneficiary, the newly formed fully insured plan was unable to pay the medical claims. Subsequently, the plaintiff hospital brought a common-law claim of promissory estoppel based on Blue Cross's representation that the beneficiaries' medical expenses would be covered under the plan. The district court held that ERISA did preempt the claim. The court distinguished *Hospice* from *Via Christi* by focusing on the "party's eligibility status" under the plan, noting that the "essential factual difference" was that the insured in *Via Christi* was an eligible beneficiary under the plan and Blue Cross had in fact already paid part of Haskins claims under the plan.

Upon a careful reading of *Hospice*, it appears that *Via Christi*, as well as BC in this case have misread *Hospice*. The family in *Hospice* did initially have benefit coverage for their infant, and it was only later that they were told coverage had been denied based on a pre-existing condition. Regardless, this factual distinction would not change the clear legal conclusion outlined in *Hospice* and we therefore decline to follow *Via Christi* on this point.

¹ In responding to Northern's motion to remand, BC went to great lengths to identify a number of cases where state common law claims of negligent misrepresentation, promissory estoppel and breach of contract were preempted by ERISA. See Defendant's Opp. Memo., p. 9-11. We note that, unlike Northern, these cases were all brought by a plan beneficiary or his assignee (a principal ERISA entity) against another principal ERISA entity in an attempt to circumvent ERISA's remedial provisions.

Northern's claims do not depend on, nor are they derived from McBride's rights to recover under the plan, but instead devolve from BC's alleged misrepresentations. Northern's breach of contract claim does not implicate the ERISA contract, but is instead based on an alleged oral contract created between BC and Northern during telephone conversations where coverage was discussed. Furthermore, there has not been a Tenth Circuit case since *Hospice* that has altered the decision or analysis of the *Hospice* case. See *Monarch Cement Co. v. Lone Star Industries, Inc.*, 982 F.2d 1448, 1454 (10th Cir.1992) (adopting *Hospice* analysis and determining that issue of interpreting Sale Agreement between two employers and apportioning pension liabilities between those companies not preempted by ERISA.).

Accordingly, under the language and holding of *Hospice*, Northern does not qualify as an ERISA plan participant, and the Motion to Remand should be granted.

II. REGARDLESS OF ANY ASSIGNMENT OF BENEFITS BY MCBRIDE, NORTHERN HAS ASSERTED CIVIL DAMAGES AS AN INDEPENDENT THIRD PARTY AND THEREFORE ERISA DOES NOT PREEMPT THE CLAIMS.

Because Northern requested the payment of medical bills as an assignee of McBride, the Defendant claims that ERISA preempts Northern's claims, notwithstanding the *Hospice* decision. The Defendant argues that Northern's claims 'relate to' ERISA because, before filing the civil suit, Northern submitted medical bills as an assignee of the patient and received payment. See Def. Opp. Memo, p. 10. Plaintiff concedes that Mr. McBride assigned his rights to benefits and that Northern exercised these rights under the Plan. However, Northern can still assert state law claims, independent of their assignment status, in Northern's separate capacity as a third-party health care provider, which is exactly what they did in this case. BC has

not cited to any Tenth Circuit case holding that assignment by a plan participant to a third-party health care provider preempts state claims by the third-party. The only case BC has cited to dealing with whether third-party health care providers have standing to sue in federal court for ERISA benefits based on their status as an assignee is *Via Christi*, 361 F.Supp at 1286.

Plaintiff emphasizes a Ninth Circuit case that we find instructive. In *The Meadows v. Employers Health Insurance*, 47 F.3d 1006, 1008 (Ninth Cir. 1995), the court allowed a third-party health care provider, who was also an assignee, to bring state law claims independent of its rights as an assignee. Also, in *Lordmann Enterprises, Inc. v. Equicor, Inc.*, 32 F.3d 1529, 1533 (11th Cir. 1994) plaintiff, a health care provider, was permitted to simultaneously assert both ERISA claims as an assignee and state law claims as an independent third-party provider. No case has been brought to the attention of this Court holding that a health care provider loses its ability to sue for damages in state court when they also request medical bill payment under an employee benefit plan. In the case at bar, the fact that plaintiff submitted medical bills as an assignee does not govern or relate to the preemption analysis. Plaintiff's submission of medical bills as an assignee was a necessary and routine process that would naturally be expected to occur when a health care provider seeks compensation for medical care rendered to a patient.

In any event, the claims at issue are based on alleged misrepresentations made by the defendant to the plaintiff. Plaintiff is suing for damages that resulted from those misrepresentations and not as an assignee for recovery of plan benefits. Even if plaintiff's damages would be calculated in part by the medical bills it submitted as an assignee, any

implication of or relation to an ERISA plan is purely incidental. *See Transitional Hospitals Corp. v. Blue Cross and Blue Shield of Texas*, the Fifth Circuit 164 F.3d 952, 955 (5th Cir. 1999) (holding that a third-party healthcare provider was permitted to bring state common law claims against an ERISA plan despite the receipt of partial payment under the plan). In short, the sort of routine assignment that occurred in the case at bar does not remove plaintiff's ability to sue for damages in its capacity as a third-party provider. Moreover, even if plaintiff were requesting civil damages as an assignee *and* as a third-party health care provider, as in *Lordmann Enterprises*, the state claims would still not be preempted by ERISA. Accordingly, this Court rules that plaintiff in this case may properly assert claims in its independent capacity as a third-party health care provider, notwithstanding the fact that an assignment of benefits had occurred.

Based upon the foregoing, Plaintiff's Motion to Remand to State Court is
GRANTED.

IT IS SO ORDERED.

DATED this 5th day of Sept, 2006.


J. THOMAS GREENE
U.S. District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

**WB MUSIC CORP.; AIN'T NOTHING
BUT FUNKIN' MUSIC; MUSIC OF
WINDSWEPT; BLOTTER MUSIC;
ELVIS MAMBO MUSIC; EMI VIRGIN
MUSIC INC.; EMI APRIL MUSIC INC.;
FAMOUS MUSIC LLC; and
SUCCESSOR-IN-INTEREST TO
FAMOUS MUSIC CORPORATION
AND STUCK IN THE THROAT MUSIC**

Plaintiffs,

vs.

**ONCE AND FOR ALL, INC.; TODD A.
McKINLEY; and VIRGINIA
McCARTIN,**

Defendants.

ORDER

Case No. 2:06-cv-00282-TC-PMW

Judge Tena Campbell

Magistrate Judge Paul M. Warner

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Tena Campbell pursuant to 28 U.S.C. § 636(b)(1)(A). Before the court is WB Music Corp., et al.'s ("Plaintiffs") Ex Parte Motion for Authorization for Alternative Service of Process.¹

According to Plaintiffs' motion and the accompanying affidavit of Plaintiffs' counsel: (1) Plaintiffs have been unsuccessful in numerous attempts to serve Defendant Todd A. McKinley ("McKinley") with the summons and complaint; (2) McKinley has hired legal counsel, who agreed to accept service of the summons and complaint for McKinley; (3) Plaintiffs' counsel

¹ Docket no. 8.

served the summons and complaint on McKinley's counsel, along with an acceptance of service for McKinley's counsel to complete and return to Plaintiffs' counsel; and (4) McKinley's counsel never returned the provided acceptance of service and has refused to communicate with Plaintiffs' counsel, despite Plaintiffs' counsel's multiple attempts to contact him. Based on the foregoing, Plaintiffs' motion requests that the court enter an order deeming McKinley as having been properly served with the summons and complaint.

Plaintiffs' motion is GRANTED. The court deems McKinley as having been properly served with the summons and complaint.

DATED this 6th day of September, 2006.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner", is written above a horizontal line.

PAUL M. WARNER
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

KLEIN-BECKER usa, LLC, a Utah Limited Liability Company, and KLEIN-BECKER IP HOLDINGS, LLC, a Nevada Limited Liability Company,

Plaintiffs,

vs.

PATRICK ENGLERT and TOM ENGLERT,
d/b/a MR. FINEST SUPPLEMENTS AND
STRIVECTINSALES@AOL.COM, AND
JOHN DOE CORPORATIONS I-X,

Defendants.

ORDER GRANTING IN PART
MOTION FOR LIMITED
JURISDICTIONAL DISCOVERY

Case No. 2:06CV00378 TS
District Judge Ted Stewart

Magistrate Judge David Nuffer

Plaintiffs moved for leave to conduct limited jurisdictional discovery¹ in the event the court granted pending motions to dismiss.² The conditional nature of the request for discovery was founded on a belief that “the jurisdictional defects alleged by the Englerts in their motions [to dismiss] were cured by the filing of Plaintiffs' First Amended Complaint.”³ However, the reply memorandum on the motion to dismiss makes it clear that Defendants Englert do not feel that the amended complaint obviates the claimed jurisdictional and standing issues.⁴

Defendants resist⁵ the proposed discovery⁶ claiming it is an attempt to discover information regarding third-party wrongdoers and is, as directed to the Defendants, abusive.⁷

¹ Docket no. 20, filed July 12, 2006.

² Docket nos. 7 and 9, filed June 26, 2006.

³ Letter from David Greenwood to David Nuffer, July 17, 2006, lodged as docket no. 36.

⁴ Combined Reply Memoranda in Support of Motions to Dismiss of Patrick Englert and of Tom Englert, docket no. 42, filed July 25, 2006.

⁵ Defendants' Opposition to Plaintiffs' Motion for Leave to Conduct Limited Jurisdictional Discovery (Opposition Memorandum), docket no. 41, filed July 21, 2006.

⁶ Exhibit A to Plaintiffs' Memorandum in Support of its Motion, in the Alternative, for Leave to Conduct Limited Jurisdictional Discovery and Request for a Continuance of Defendants' Motions to Dismiss (Supporting Memorandum), docket no. 21, filed July 12, 2006.

Defendant say Plaintiffs should investigate “the act and conduct of a third party” distributor of legitimate Klein-Becker products if “Klein-Becker believes it has a distribution problem.”⁸ This would require the investigation of many sources unrelated to the alleged acts. Defendants say it is unfair to require them to answer questions, and this could turn out to be true if they are vindicated, but it would be more unfair at this stage to require the manufacturer to pursue all distributors when the allegations are relevant only to those distributors dealing with Defendants. It would be like requiring IBM to question all its computer dealers to find out which dealer installed an allegedly defective IBM replacement part instead of asking the complaining computer owner which dealer installed the defective part.

Defendants also claim that the discovery should have been already conducted as “basic Rule 11 kind of prefiling investigation”⁹ and jump into the merits of the claims against them, arguing that Patrick Englert’s resale of genuine products is permissible,¹⁰ and that because “Defendants have stolen no products” and “have neither manufactured nor sold counterfeit products at all, let alone in Utah . . . there is no possible jurisdictional nexus to such causes of action arising out of the products being stolen or counterfeited in Utah.”¹¹ These arguments are based on factual assumptions that Plaintiffs do not share and which are not in the record. Plaintiffs are entitled to investigate the fundamental jurisdictional facts,. It is true that these facts in some measure relate to the merits, but the proposed discovery does not reach the broad range of issues in the case. The argument that jurisdictional discovery should always precede filing ignores reality. A plaintiff does not, before filing, have direct access to an opposing party’s information.

⁷ Opposition Memorandum at 2.

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ *Id.* at 5.

ORDER

IT IS HEREBY ORDERED that Plaintiffs' Motion for Leave to Conduct Limited Jurisdictional Discovery¹² is GRANTED IN PART.

IT IS FURTHER ORDERED that the proposed discovery is modified as shown below, and no depositions will be permitted at this stage. Otherwise, the proposed discovery¹³ is acceptable.

INTERROGATORY NO. 4: Identify any and all persons and/or entities likely to have discoverable knowledge or information of the matters inquired into in these interrogatories and requests for discovery and production, including a summary description of the information for each such person or entity.

REQUEST NO. 2: All contracts, agreements and documents that refer to, describe, or evidence an agreement or arrangement between Defendant, Tom Englert, Mr. Finest Supplements, Inc. and/or any other person or entity concerning the sale, purchase, supply, marketing, and/or distribution of any Klein-Becker product and/or imitation or counterfeit Klein-Becker product to or from Utah.

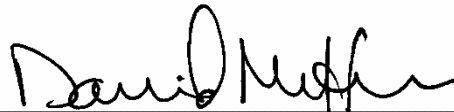
REQUEST NO. 11: All documents relating to the purchase or sale of Klein-Becker products and/or imitation or counterfeit Klein-Becker products on the Internet by Defendant, Tom Englert, and/or Mr. Finest Supplements, Inc.

REQUEST NO. 13: Documents sufficient to identify the corporate structure, officers, directors, shareholders and employees of Mr. Finest Supplements, Inc.

IT IS FURTHER ORDERED that Defendants will respond to Plaintiffs' Interrogatories, Requests for Production of Documents, and allow Plaintiffs' requested Rule 34 inspection on or before September 29, 2006.

DATED this 6th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David Nuffer", written over a horizontal line.

David Nuffer, U.S. Magistrate Judge

¹² Docket no. 21, filed July 12, 2006.

¹³ Exhibit A to Plaintiffs' Memorandum in Support of its Motion, in the Alternative, for Leave to Conduct Limited Jurisdictional Discovery and Request for a Continuance of Defendants' Motions to Dismiss (Supporting Memorandum), docket no. 21, filed July 12, 2006.

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

KLEIN-BECKER USA, LLC, a Utah
Limited Liability Company, and KLEIN-
BECKER IP HOLDING, LLC, a Nevada
Limite Liability Company,

Plaintiff,

vs.

PATRICK ENGLERT, et al.,
Defendants.

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT


Case No. 2:06-CV-378 TS

This matter is before the Court on Plaintiff's Motion for Leave to File Amended Complaint as of Right. There being no opposition it is therefore

ORDERED that Plaintiff's Motion for Leave to File Amended Complaint as of Right (Docket No. 17) is GRANTED.

DATED September 6, 2006.

BY THE COURT:



TED STEWART
United States District Judge

<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION</p>		<p style="text-align: right;">FILED U.S. DISTRICT COURT 2006 SEP - 5 P 2:31</p>
<p>THERESA BENALLY,</p>	<p>SCHEDULING ORDER DISTRICT OF UTAH</p>	
<p>Plaintiff,</p>	<p>BY: _____ DEPUTY CLERK</p>	
<p>v.</p>	<p>Case No. 2:06CV00509 JTG</p>	
<p>KENNECOTT UTAH COPPER CORPORATION</p>	<p>District Judge J. Thomas Greene</p>	
<p>Defendants.</p>		

The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | | | |
|-----------|---|---------------|
| 1. | PRELIMINARY MATTERS | DATE |
| | Nature of claims and any affirmative defenses: Plaintiff claims violations of her civil rights under the American's with Disability Act and the Rehabilitation Act. | |
| | Defendants deny the Plaintiff's allegations and raise several affirmative defenses. | |
| a. | Was Rule 26(f)(1) Conference held? Yes, by telephone. | 08/10/06 |
| b. | Has Attorney Planning Meeting Form been submitted?
Yes | 08/24/06 |
| c. | Was 26(a)(1) initial disclosure completed? No. | 08/24/06 |
| 2. | DISCOVERY LIMITATIONS | NUMBER |
| a. | Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. | Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. | Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |

d.	Maximum Interrogatories by any Party to any Party	<u>25</u>
e.	Maximum requests for admissions by any Party to any Party	<u>unlimited</u>
f.	Maximum requests for production by any Party to any Party	<u>unlimited</u>
3.	AMENDMENT OF PLEADINGS/ADDING PARTIES	DATE
a.	Last Day to File Motion to Amend Pleadings	<u>09/10/06</u>
b.	Last Day to File Motion to Add Parties	<u>09/10/06</u>
4.	RULE 26(a)(2) REPORTS FROM EXPERTS	DATE
a.	Plaintiff	<u>12/16/06</u>
b.	Defendant	<u>01/16/07</u>
c.	Counter reports	<u>02/16/07</u>
5.	OTHER DEADLINES	DATE
a.	Discovery to be completed by:	
	Fact discovery	<u>11/05/06</u>
	Expert discovery	<u>02/02/07</u>
b.	(optional) Final date for supplementation of disclosures and discovery under Rule 26 (e)	<u>03/30/07</u>
c.	Deadline for filing dispositive or potentially dispositive motions	<u>12/05/06</u>
6.	SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION	DATE
a.	Referral to Court-Annexed Mediation:	<u>No</u>
b.	Referral to Court-Annexed Arbitration	<u>No</u>
c.	Evaluate case for Settlement/ADR on	<u>11/05/06</u>

- d. Settlement probability: Cannot be determined until after fact discovery is completed

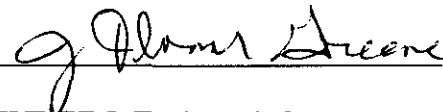
*Specify # of days for Bench or Jury trial as appropriate.
Shaded areas will be completed by the court.*

- | 7. | TRIAL AND PREPARATION FOR TRIAL | TIME | DATE |
|----|---|----------|----------|
| a. | A status and scheduling conference will be held to discuss dates for trial and final pre-trial conference | 11:00 AM | 12/05/06 |

8. **OTHER MATTERS**

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 5th date of September, 2006


JUDGE J. THOMAS GREENE
U.S. DISTRICT COURT JUDGE

¹ Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

² **Error! Main Document Only.** A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

PEGGY E. STONE (6658)
Assistant Utah Attorney General
MARK SHURTLEFF (4666)
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100

UNITED STATES DISTRICT COURT, FOR THE
DISTRICT STATE OF UTAH, CENTRAL DIVISION

BRADLEY SCOTT BROKAW; GORDON
BROKAW AND DEBBIE BROKAW,
individuals ,

Plaintiffs,

v.

SALT LAKE COUNTY, a political
subdivision of the State of Utah; JORDAN
SCHOOL DISTRICT, a political
subdivision of the State of Utah; BEN
BOLDUC, an individual; SCOTT
TAGGART, an individual; and JOHN
DOES I - X, individuals,

Defendants.

**ORDER GRANTING MOTION FOR
ENLARGEMENT OF TIME TO
ANSWER OR OTHERWISE RESPOND
TO COMPLAINT**

Case No.2:06cv729TS

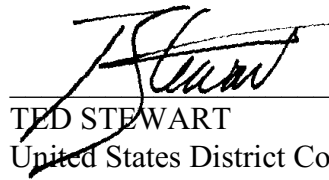
Judge Ted Stewart

Based upon Defendants Jordan School District's and Scott Taggart's *Motion for
Enlargement of Time To Answer or Otherwise Respond to Complaint* and good cause appearing
the Court enters the following order:

The motion is granted. Defendant Jordan School District and Defendant Scott Taggart s shall file their answers or other responses to Plaintiffs' *Complaint* on or before September 19, 2006.

DATED this 6th day of September, 2006.

BY THE COURT:



TED STEWART
United States District Court Judge

UNITED STATES DISTRICT COURT

Central Division

District of

UTAH

FILED
U.S. DISTRICT COURT

2006 SEP -5 P 2:29

DISTRICT OF UTAH

DEPUTY CLERK

John A. Campbell

Plaintiff

V.

City of Jersey City, NJ

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

Judge Dale A. Kimball

DECK TYPE: Civil

DATE STAMP: 09/05/2006 @ 15:12:18

CASE NUMBER: 2:06CV00746 DAK

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

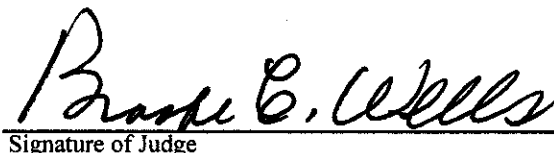
ENTER this

5th

day of

Sept.

2006.



Signature of Judge

Magistrate Judge Brooke C. Wells

Name and Title of Judge

UNITED STATES DISTRICT COURT

Central Division

District of

UTAH

John A. Campbell

Plaintiff

V.

Hackensak, City of

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

CASE NUMBER:

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 6th day of September, 2006.

s/David Nuffer

Signature of Judge

Magistrate Judge David Nuffer

Name and Title of Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JAKE C. PELT, ET AL., FOR
THEMSELVES AND FOR AND ON
BEHALF OF A CLASS OF PERSONS
consisting of all Navajo Indians residing in
San Juan County, Utah, including a sub-class
of persons consisting of all other Indians the
Secretary of Interior saw fit to settle on lands
described in the 1933 Act [47 Stat. 1418]
prior to May 17, 1968,

Plaintiffs,

vs.

STATE OF UTAH,

Defendant.

ORDER

Case No. 2:92-CV-639 TC

Beneficiaries of the Navajo Trust Fund filed this class action suit against the Fund trustee, Defendant State of Utah, seeking relief for alleged mismanagement of Fund monies. Currently, the court is faced with the single issue of whether Utah has fulfilled its duty to account through its production of documents during this litigation. But before the court orders briefing or sets a hearing on the issue, the court requests a fact-finding meeting to determine the nature of the documents presented during discovery and documents supporting the 1991 Legislative Auditor's Report. Accordingly, it is ORDERED that all parties or their representatives, as well as representatives of the legislative auditors who generated the 1991 Legislative Auditor's Report, meet with the court on Tuesday, September 26, 2006, at 9:00 a.m. The meeting will convene at

the Office of the Legislative Auditor General, and, upon a general review of audit work papers and a presentation by the auditors about the documents sought, reviewed, and created in preparation for the 1991 Legislative Auditor's Report, will continue at the Utah Attorney General's office in the Heber M. Wells Building.

IT IS SO ORDERED this 6th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge

UNITED STATES DISTRICT COURT

Central Division

District of

FILED
U.S. DISTRICT COURT
2006 SEP -5 P 2:31
Utah

UNITED STATES OF AMERICA

V.

Reuben Cuch, Jr.

JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervised Release)

DEPUTY CLERK

Case Number: DUTX297CR000235-002

USM Number: 06062-081

Wendy M. Lewis, FPD

Defendant's Attorney

THE DEFENDANT:

☒ admitted guilt to violation of condition(s) 1, 2, 4 & 5 of the term of supervision.

☐ was found in violation of condition(s) _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
1	Absconded from supervision	7/19/2006
2	Failed to follow instructions as directed by the USPO	7/19/2006
4	Failed to pay restitution	7/19/2006
5	Failed to submit urine specimen for testing	7/19/2006

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's Residence Address: _____

Defendant's Mailing Address: _____

8/14/2006

Date of Imposition of Judgment

Signature of Judge

J. Thomas Greene

Name of Judge

U.S. District Judge

Title of Judge

Date

September 5, 2006

DEFENDANT: Reuben Cuch, Jr.
CASE NUMBER: DUTX297CR000235-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

10 months, less credit for time served.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Reuben Cuch, Jr.

CASE NUMBER: DUTX297CR000235-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

Upon release from confinement, there will be no supervision.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Reuben Cuch, Jr.

CASE NUMBER: DUTX297CR000235-002

SPECIAL CONDITIONS OF SUPERVISION

1. Upon release from custody, the defendant shall serve 120 days at the Cornell Community Treatment Center, with work release to seek employment, drug & alcohol treatment, & release for religious services.
2. The defendant shall obtain written approval from the US Probation Office prior to going to the Ute Tribe Indian Reservation &/or into fort Duchesne in Uinta County, Utah.
3. The defendant shall participate in drug & alcohol abuse treatment under a co-payment plan, as directed by the USPO.
4. The defendant shall not use or possess alcohol, nor frequent businesses where alcohol is the chief item of order.
5. The defendant shall pay resitution (see page 6 and attached orders) at the minimum rate of \$100 per month.

DEFENDANT: Reuben Cuch, Jr.
CASE NUMBER: DUTX297CR000235-002

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments set forth on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$	\$	\$ 10,165.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Utah State Crime Victim Reparations Office Attention: Trust Fund Case #105748 350 East 500 South, #200 Salt Lake City, Utah 84111	\$3,165.00	\$3,165.00	joint/several
Ute Indian Tribe P. O. Box 190 Fort Duchesne, Utah 84026	\$2,000.00	\$2,000.00	joint/several
Utah State DCFS 140 West 425 South (330-15) Roosevelt, Utah 84066	\$5,000.00	\$5,000.00	individual

TOTALS	\$	10,165.00	\$	10,165.00
--------	----	-----------	----	-----------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution or a fine more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Reuben Cuch, Jr.
CASE NUMBER: DUTX297CR000235-002

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☒ Lump sum payment of \$ 10,165.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below); or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay.
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

The court orders that the \$10,165.00 ordered on 10/27/1997 for the original offense be re-instated at the rate of \$100 per month. The court orders that Gregory Checora, Reuben Cuch, Jr., Warrenell Cuch, and Bobby Redcap pay restitution, jointly and severally, the sum of \$5,165.00. The court further orders the defendant and each of the co-defendants above named shall pay \$5000 each, a total of \$20,000, into a separate account maintained by the Division of Child and Family Services for the use and benefit of the children of Benji Murray, who was killed.

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☒ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount and corresponding payee, if appropriate.

Gregory Checora	97-CR-000235-001	\$5,165.00	(and \$5,000 individually)
Reuben Cuch, Jr.	97-CR-000235-002	\$5,165.00	(and \$5,000 individually)
Warrenall Cuch	97-CR-000235-003	\$5,165.00	(and \$5,000 individually)
Bobby Redcap	97-CR-000235-004	\$5,165.00	(and \$5,000 individually)

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

**In the United States District Court
for the District of Utah, Central Division**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GREGORY CHECORA, et. al.

Defendants.

ORDER

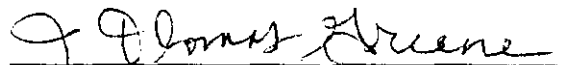
Case No. 2:97CR235 JTG

To: The Ute Indian Tribe Accounting Office

The Ute Indian Tribe Accounting Office is directed to withhold \$100 per month, per defendant, from the approximately \$200 each of the following defendants receive monthly in tribal dividend payments: Gregory Checora, Reuben Cuch Jr., Warrenell Cuch, and Bobby Redcap. The Office is to submit this amount monthly (a total of \$400 per month) to the United States District Court, Clerk of the Court, to be applied toward the restitution ordered in the above entitled case.

IT IS SO ORDERED.

DATED this 31st day of August, 2006.


J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

**In the United States District Court
for the District of Utah, Central Division**

UNITED STATES OF AMERICA, Plaintiff, vs. GREGORY CHECORA, et. al. Defendants.	ORDER Case No. 2:97CR235 JTG
---	---

To: United States District Clerk of Court

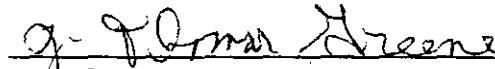
The Ute Indian Tribe Accounting Office has been directed to divert \$100 per month, per defendant, for payment of restitution from the following individuals: Gregory Checora, Reuben Cuch Jr., Warrenell Cuch, and Bobby Redcap. The disbursements are to be made to the Clerk of the Court for the United States District Court. The Clerk of the Court is first to disburse \$5,165.00, joint and severally from each defendant to the Ute Indian Tribe and the Utah State Office of Crime Victims.

After the \$5,165 has been paid, the said individuals are then obligated to pay \$5000 each to the Utah State Division of Family Services, for a total of \$20,000 to be paid by the four persons above named. These funds are for the use and benefit of the children of Benji Murray, namely Jeffrey Murray (a juvenile) and Jay Murray, age 18 or older. Previously it had been contemplated that an attorney, Mr. Martin Olsen, was going to operate on a pro bono

capacity to distribute those funds. This has not been done and that designation is cancelled and no longer necessary. All disbursements will be made by the Clerk of the District Court. This Order supercedes all prior orders concerning restitution, including the Order of January 5, 2000.

IT IS SO ORDERED.

DATED this 31st day of August, 2006.



J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE